

N. 2914

No. 14549

**United States
Court of Appeals**
for the Ninth Circuit

SPENCER GRANT, Executor of the Last Will
and Testament of BLANCHE KELLEHER
GRANT, Deceased,

Appellant and Appellee,

vs.

JAMES G. SMYTH, Former Collector of Internal
Revenue,

Appellee and Appellant.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

JAN 26 1955

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the the United States in and
for the Northern District of California, South-
ern Division

No. 31582

SPENCER GRANT, Executor of the Last Will
and Testament of BLANCHE KELLEHER
GRANT, Deceased,

Plaintiff,

vs.

JAMES G. SMYTH, Former Collector of Internal
Revenue,

Defendant.

COMPLAINT FOR RECOVERY OF
FEDERAL ESTATE TAX

To the Honorable, the Judges of the United States
District Court for the Northern District of Cali-
fornia:

Now comes plaintiff, Spencer Grant, as Executor
of the Last Will and Testament of Blanche Kel-
leher Grant, Deceased, and alleges as follows:

I.

This action arises under a statute of the United
States providing for internal revenue, to wit, under
Section 811 of the Internal Revenue Code (U.S.C.,
Title 26, Sec. 811), as hereinafter more fully ap-
pears.

II.

On March 28, 1947, plaintiff was duly appointed
as Executor of the Last Will and Testament of

Blanche Kelleher Grant, Deceased, who was a resident of the City and County of San Francisco, State of California, at the time of her death on March 2, 1947, by an order of the Superior Court of the State of California in and for said City and County of San Francisco duly made and entered in the Matter of the Estate of said decedent and plaintiff at all times since said March 28, 1947, has been and now is duly appointed, qualified and acting as such Executor. Plaintiff is a resident of the Northern District of California, Southern Division.

III.

Defendant at all times between on or about May 26, 1948, and on or about August 8, 1950, was the duly appointed, qualified and acting United States Collector of Internal Revenue for the First Collection District of California. Defendant is a resident of the Northern District of California, Southern Division.

IV.

On or about May 26, 1948, plaintiff duly filed with defendant as such Collector the Federal Estate Tax Return for the estate of said decedent and paid to defendant as such Collector the sum of \$118,-123.25 which was the full amount of tax shown due by said return. Said Section 811 of the Internal Revenue Code provides that the value of the gross estate of a decedent shall be determined by including the value at the time of his death of all property includable in his gross estate, and certain annuity

contracts were returned under Item 7 of Schedule E of said estate tax return at the aggregate value of \$160,399.45.

V.

Said annuity contracts, which had been purchased by said decedent in 1938 and 1939 from various insurance companies for the aggregate sum of \$390,000, were single premium non-participating and non-refundable joint and survivor annuity contracts which provided for payment of annuities each year to said decedent and plaintiff during their joint lives and to the survivor of them until the death of such survivor. A list of said annuity contracts, showing the name of the issuing company, the cost of each contract, and the amount of the annuity payable under each contract, is as follows:

Contract No.	Company	Cost	Annuity
A-56921	Connecticut General Life	\$ 50,000.00	\$ 2,629.00
13523	Connecticut Mutual Life	25,000.00	1,314.25
2296-AB2	Metropolitan Life	6,521.46	328.18
2297-AB2	Metropolitan Life	18,478.54	984.54
972085	Pacific Mutual Life	25,000.00	1,428.32
A121202	Sun Life of Canada	50,000.00	2,631.58
AN18809	Aetna Life	38,015.95	1,973.40
AN18810	Aetna Life	11,984.05	657.80
A-21422	Prudential Ins. Co.	25,000.00	1,313.00
A-22937	Prudential Ins. Co.	25,000.00	1,338.25
987534	Pacific Mutual Life	15,000.00	803.23
A122793	Sun Life of Canada	50,000.00	2,679.53
2111175	Travelers Ins. Co.	25,000.00	1,346.72
2109941	Travelers Ins. Co.	25,000.00	1,346.72
Totals		\$390,000.00	\$20,774.52

VI.

At the time of said decedent's death, plaintiff was 67 years, 2 months and 2 days old and his life expectancy as the surviving annuitant under said annuity contracts was 9.96 years under the Actuaries' or Combined Experience Table of Mortality. Said aggregate value of \$160,399.45 was computed in accordance with plaintiff's life expectancy of 9.96 years and the value of said contracts at the time of said decedent's death was not greater than said sum of \$160,399.45.

VII.

On or about July 18, 1950, plaintiff was notified by the Bureau of Internal Revenue of a proposed deficiency assessment of estate tax with respect to said return in the aggregate amount of \$29,235.79. Said proposed deficiency in tax resulted principally from adjustment of the aggregate value of said annuity contracts by increasing such value from the returned amount of \$160,399.45 to the adjusted amount of \$257,117.20. The portion of the proposed deficiency in tax attributable to such adjustment in value was the sum of \$28,356.41.

VIII.

On or about August 8, 1950, plaintiff paid to defendant as such Collector the full amount of said proposed deficiency of \$29,235.79. Such payment, to the extent of said sum of \$28,356.41, was erroneously and illegally assessed against and collected from plaintiff and payment thereof by plaintiff was

made by him without prejudice to his right to demand refund thereof.

IX.

On or about November 26, 1951, plaintiff duly filed with the Commissioner of Internal Revenue his amended claim for refund of said sum of \$28,356.41 and of such additional amount of estate tax to which he will be entitled when the deductible amount of his attorney's fees and disbursements incurred and to be incurred by him in seeking refund of said sum has been established, together with interest on such refund as provided by law. Plaintiff set forth in said amended claim for refund as grounds for recovery thereof that said annuity contracts were not includable in the gross estate of said decedent under said Section 811 of the Internal Revenue Code or at all but that, if they were so includable, the basis of their valuation for purposes of said deficiency assessment was arbitrary, unreasonable and contrary to law and erroneously attributed to them a value far in excess of their fair value at the time of decedent's death.

X.

More than six (6) months have expired from and after the date of filing of said amended refund claim without the rendition of any decision thereon by the Commissioner of Internal Revenue within that time.

XI.

Said sum of \$28,356.41 was erroneously and illegally assessed against and collected from plaintiff for the reasons set forth in said amended claim for

refund, and a full, true and correct copy of said amended claim is attached hereto as an exhibit and by this reference incorporated herein and made a part hereof.

XII.

By reason of the matters hereinbefore alleged, defendant became indebted to plaintiff in said sum of \$28,356.41 and in such additional sum to which plaintiff will be entitled when the deductible amount of his said attorney's fees and disbursements has been established. Neither the whole nor any part of said sum of \$28,356.41 or of said additional sum has been paid or credited to plaintiff and the whole thereof remains due, owing and unpaid to plaintiff.

Wherefore, plaintiff prays for judgment against defendant as follows:

(1) For the sum of \$28,356.41, with interest thereon at the rate of 6% per annum from August 8, 1950;

(2) For such additional sum to which plaintiff will be entitled when the deductible amount of his said attorney's fees and disbursements has been established;

(3) For his costs of suit; and

(4) For such other and further relief as may be proper in the premises.

/s/ EDGAR T. ZOOK,

/s/ HENRY V. COLBY,

McKEON & COLBY,

Attorneys for Plaintiff.

DEMAND FOR JURY TRIAL

By this endorsement hereon and pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury of all issues so triable in the above-entitled action.

/s/ EDGAR T. ZOOK,

/s/ HENRY V. COLBY,

McKEON & COLBY,

Attorneys for Plaintiff.

Form 843

U. S. Treasury Department

Internal Revenue Service

AMENDED CLAIM

To Be Filed With the Collector Where
Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Collector's Stamp: [Blank.]

Name of taxpayer or purchaser of stamps:

Spencer Grant, as Executor of the Last Will and Testament of Blanche Kelleher Grant, Deceased.

Business address:

c/o Slack & Zook, 310 Sansome St., San Francisco 4, Calif.

Residence:

1810 Jackson Street, San Francisco, California.

1. District in which return (if any) was filed: 1st California, San Francisco.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from, 19.., to, 19...
3. Character of assessment or tax: Estate tax.
4. Amount of assessment: \$28,356.41. Dates of payment: August 8, 1950.
5. Date stamps were purchased from the Government:.....
6. Amount to be refunded (plus interest): \$28,356.41*.
7. Amount to be abated (not applicable to income, estate, or gift taxes):

*In addition to said sum of \$28,356.41, claimant also requests refund of the amount of estate tax to which he will be entitled when the deductible amount of attorney's fees and disbursements incurred and to be incurred by him in connection with refund of said sum has been established.

The claimant believes that this claim should be allowed for the following reasons:

This amended claim is for refund of estate tax overpaid with respect to certain joint and survivorship annuity contracts included in the gross estate. The grounds for the claim are as follows:

(1) The annuity contracts are not includable in the gross estate.

(2) Even assuming for purposes of argument that the contracts comprised a part of the gross estate, they were erroneously valued at amounts greatly in excess of their fair value.

These grounds are discussed in more detail in the attached statement.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

/s/ SPENCER GRANT,
Executor.

Dated November 23rd, 1951.

GROUNDS FOR REFUND CLAIM

Statement of Facts

On May 26, 1948, the Federal Estate Tax Return (Form 706) for the Estate of Blanche Kelleher Grant, Deceased, was duly filed with the Collector of Internal Revenue at San Francisco, California, and the full amount of tax shown due by the return in the sum of \$118,123.25 was paid by claimant, as executor, to such Collector. Claimant has at all times since the filing of said return been and now is the duly appointed, qualified and acting executor for said estate.

The joint and survivorship annuity contracts comprising Item 7 of Schedule E of the return were returned at the aggregate value of \$160,399.45, which was computed in accordance with Table A of Regulations 105. A list of said annuity contracts and a statement of the basis of computation of their returned value was annexed to such Schedule and full, true and correct copies of such list and statement are attached hereto as Exhibit A.

By letter, dated July 18, 1950, with symbols "IT-EG-22144-1st Calif., Estate of Blanche Kelleher Grant," and addressed to claimant by the Internal Revenue Agent in Charge, San Francisco Division, claimant was notified of a proposed deficiency assessment of estate tax in the aggregate amount of \$29,235.79 computed in accordance with the "report of examination" of which a copy was enclosed with said letter. The proposed deficiency in tax resulted

principally from adjustment of the value of said annuity contracts by increasing such value from the returned amount of \$160,399.45 to the adjusted amount of \$257,117.20. The portion of the proposed deficiency in tax attributable to such adjustment was \$28,356.41. The balance of the proposed deficiency resulted from other adjustments not here material and which claimant does not question.

At the time the return was filed and the tax shown due thereon was paid on May 26, 1948, the sum of \$28,000 was deposited by claimant with said Collector to be held as a special deposit to cover any additional estate tax that might thereafter be determined to be due from the estate. On August 7, 1950, the further sum of \$1,397.68 was paid by claimant to said Collector to be added to said special deposit. Said further sum represented \$1,235.79 on account of the principal amount of the proposed deficiency and \$161.89 as interest on said sum of \$1,235.79 at the statutory rate from June 2, 1948 (15 months after Mrs. Grant's death), to August 8, 1950.

By letter, dated August 17, 1950, and addressed to the Internal Revenue Agent in Charge, San Francisco Division, on claimant's behalf, the Agent in Charge was notified that claimant consented to the immediate assessment of the entire amount of said proposed deficiency in order that claimant might be placed in position to file a claim for refund; and by letter, dated August 18, 1950, and addressed to said Collector on claimant's behalf, the Collector was

authorized immediately to assess said deficiency and to apply said special deposit forthwith in payment thereof. Said special deposit already had been so applied on August 8, 1950, and the full amount of said deficiency consequently already had been paid by claimant to said Collector on said date. Of the amount of such payment, said sum of \$28,356.41 was erroneously and illegally assessed against and collected from claimant and payment thereof was made by claimant without prejudice to his right to demand refund thereof.

Said annuity contracts were purchased by Mrs. Grant in 1938 and 1939 from various insurance companies for a total consideration of \$400,000. They were non-participating, non-refundable joint and survivorship annuity contracts for payment of stipulated annuities aggregating \$20,774.52 per year to Mrs. Grant and claimant during their joint lives and, on the death of either, to the survivor of them for his or her life. No reversionary interest was retained by Mrs. Grant under the contracts, either expressly or otherwise.

Mrs. Grant died on March 2, 1947. On that date, claimant, who was born January 1, 1880, was 67 years and two months old. Under the Actuaries' or Combined Experience Table of Mortality, the life expectancy for claimant on March 2, 1947, as the surviving annuitant under said annuity contracts was 9.96 years. The value of said annuity contracts, i.e., the value of the total annuity payments receivable by claimant under said contracts during his life expectancy, was not more than the sum of \$160.-

399.45 at which the annuity contracts were valued in the return.

Claimant is informed and believes that the adjusted value of \$257,117.20 in said "report of examination" was based on the aggregate costs which would have been charged by the same insurance companies on March 2, 1947, for annuity contracts calling for payment to claimant of annuities equal in amount to those payable under the contracts in question. The basis of computation of such costs differs substantially and materially from the basis used when the contracts in question were issued in 1938 and 1939 in that the original costs were all computed on the basis of an assumed interest rate of 3% whereas the March, 1947, costs were all computed on the basis of an assumed rate of 2% except for a 2¼% rate used in the case of Metropolitan Life Insurance Company. Moreover, said Company used an age setback of 3 years in 1947 but only 1 year in 1938 and Pacific Mutual Life Insurance Company used a different mortality table in 1947 than the one used for its contract No. 972085 in 1937.

Taking into account the fact that the portion of each annuity payment to claimant equal to 3% of the original cost paid by Mrs. Grant is taxed to claimant as income under Section 22(b)(2)A of the Internal Revenue Code, claimant would have to live to the age of 96 years—or three times longer than his expectancy—before recovering a return of the

full amount of the adjusted capital valuation of \$257,117.50.

Basis of Refund Claim

This refund claim is based on the following separate grounds:

(1) The annuity contracts are not includable in the gross estate.

(2) The "comparable contract" method of valuation used in arriving at the adjusted valuation of the annuity contracts erroneously attributed to them a value far in excess of their actual value and was arbitrary, unreasonable and contrary to law.

The annuity contracts are not includable in the gross estate.

The annuity contracts were purchased by Mrs. Grant in 1938 and 1939 and she died in 1947. She retained no reversionary interest under the contracts, either by their express terms or otherwise. If the contracts were includable in her gross estate, it was because they constituted a transfer "intended to take effect in possession or enjoyment at or after death" within the meaning of Section 811(c) of the Internal Revenue Code. However, Section 811(c) was amended by Section 7 of the Technical Changes Act of 1949 to provide that such a transfer is not includable in gross estate in the case of property transferred prior to October 7, 1949, by a decedent dying after February 10, 1939, unless the decedent

retained a reversionary interest by the express terms of the instrument of transfer. This amendment was given retroactive effect by its terms. Accordingly, under the authorities construing the Technical Changes Act as applied to similar cases, the annuity contracts in this case did not comprise any part of Mrs. Grant's estate and the entire amount of additional tax assessed with respect to them was erroneously and illegally assessed. See:

Commissioner v. Wilder's Estate,
118 F. 2d 281;

Pruyn's Estate v. Commissioner,
184 F. 2d 971;

Estate of Twogood,
15 T.C., No. 129.

Even assuming that the annuity contracts are includable in the gross estate, the adjusted valuation placed on them was far in excess of their actual value.

The "comparable contract" method of valuing the annuity contracts resulted in an adjusted valuation of \$257,117.20. This valuation cannot be sustained because (a) it is based on an irrelevant measure of value, (b) it fails to take into account all relevant factors and elements of value, and (c) it exceeds the fair value of the contracts by at least \$96,717.75.

(a) The "comparable contract" measure of value is an irrelevant measure in this case.

This is so because contracts issued on March 2, 1947, the date of Mrs. Grant's death, are not comparable to the Grant contracts which were issued in 1938 and 1939. The 1947 contracts are not comparable for two reasons: First, a different basis of computing premiums was used by the insurance companies in 1947 which increased the relative cost or value of the 1947 contracts, and, second, a much greater portion of the annuity payments under the 1947 contracts would constitute tax-free return of capital, thereby also increasing their relative value. Increased cost of 1947 contracts.

The premiums for the Grant contracts were computed on an assumed 3% interest basis and the premiums for the so-called "comparable contracts" are computed on an assumed 2% interest basis (2¼% in one instance). The cost of a contract computed on a 2% basis is much greater than if computed on a 3% basis and this cost differential is amplified by the loading charge of 6½% applicable to the gross cost or premium (differences in setback figures and actuarial tables in the cases of two of the contracts further preclude a comparison in those instances). The foregoing proposition is forcefully illustrated by the fact that if the premiums for contracts issued in 1947 had been based on the same factors used in computing the original consideration for the Grant contracts, the 1947 or so-called "comparable contracts" actually would have cost \$21,-333.36 less than the adjusted value erroneously placed on them by the Bureau in this case. This

renders the cost of the so-called "comparable contracts" entirely irrelevant as a measure of value for the simple reason that such contracts are not comparable.

It was held in *Edwards v. Commissioner*, 46 B.T.A. 815, that a reduction in the assumed interest rate for purposes of computing annuity contract premiums is a factor which differentiates allegedly comparable contracts "unmistakably" from previously issued contracts. This decision was affirmed (135 F. 2d 574) and the appellate court said:

"Subsequent to their issuance and prior to the (valuation date), the basis of insurance annuity contracts had been so modified that it was possible to secure them only at a greater cost.
* * * The value could not be established by consideration of comparable contracts for the simple reason that no comparable contract was procurable." (Our emphasis.)

The different interest rate used in computing the costs of 1947 contracts also means that the amounts of the calculated principal and interest elements making up each payment under the 1947 contracts differ from those under the Grant contracts. A package, the price of which is computed on the basis that it will contain "X" dollars of principal and "Y" dollars of interest, is not comparable to one the price of which is computed on the assumption it will contain "A" dollars of principal and "B" dollars of interest, especially when only \$5 is charged for the first package and \$8 is charged for

the other. In the case of annuity contracts, the different interest factor used in computing costs also results in a difference in the amount of the reserves set up by the companies and in the amounts of the declining balances thereof as payments are made to the annuitant.

Increased return of capital under 1947 contracts.

There is another essential difference between the Grant annuity contracts and the so-called "comparable contracts." By reason of Section 22(b)(2)A of the Internal Revenue Code, \$12,000 of the annual payments under the Grant contracts is taxable income to claimant each year whereas only about \$6,700 would be taxable income to him each year under the so-called "comparable contracts." In other words, his tax free return of capital would be about \$5,300 greater each year under the so-called "comparable contracts" even though the amount of the annuity payments would be identical in both cases. A contract for a \$20,000 annuity which entitles the annuitant to keep, for example, \$14,000 as tax-free return of capital obviously is not comparable to another contract under which he may keep only \$8,000. The value of the former bears no relation to the value of the latter. The value of the former is, of course, much greater.

- (b) The "comparable contract" measure of value fails to take into account all relevant factors and elements of value.

It takes no account whatsoever, for example, of the fact that under Section 22(b)(2)A of the In-

ternal Revenue Code more than half, or \$12,000, of the annuity payments to claimant must be included in his taxable income so that he would have to live three times longer than his actuarial expectancy before he would recover the full amount of the adjusted capital valuation determined by the Bureau. This has a vital bearing on the value of the annuity contracts because the fair market value of the right to receive an annual capital payment of \$20,000 no part of which will be taxable income to the recipient is obviously greater than the value of his right to receive the same amount annually if \$12,000 thereof will be taxable income each year. The difference between the market value of a payment which is tax free to the recipient and the market value of a payment of the same amount which is taxable income to the recipient is clearly illustrated by the fact that a tax-exempt government or municipal bond fetches a much higher market price than a high grade corporate bond bearing the same rate of interest and with the same maturity value and date. The corporate bond invariably has a lower market value.

Stated differently, claimant's right to receive "X" dollars of capital payable in 29 annual installments if he lives that long is not worth "X" dollars, even discounted, to him or anyone else if the only available evidence shows that he has an expectancy of not more than 10 years. The result of the "comparable contract" method in this case is to treat as corpus or capital for estate tax purposes an amount

which will also be treated as taxable income, and this is contrary to law. See *Bull v. United States*, 295 U. S. 247.

- (c) The valuation obtained by use of the "comparable contract" method exceeds the actual fair value of the contracts by at least \$96,717.75.

This sum represents the difference between the adjusted value and the returned value. It is a minimum sum and there is substantial evidence that in fact the fair value of the contracts was substantially less even than the returned value.

In the first place, under Section 81.10(i)(3) of Regulation 105, joint and survivorship annuity contracts issued by any party other than an insurance company are to be valued by using Table A and discounting the payments at 4%. This means that if the joint and survivorship contracts in this case had been issued by a charitable institution, for example, they would have been valued at the lower returned value of \$160,399.45 and not at the adjusted value of \$257,117.20. Also, Mrs. Grant might have bequeathed property to a charitable institution subject to the payment of identical annuities to claimant and they would have been valued at the lower returned value. Lacking any evidence of difference in ability to continue to make future payments, how can the present value of the right to receive \$1.00 from an insurance company in 1952 be far greater than the present value of the right to receive \$1.00 in 1952 from Harvard University or the Carnegie Foundation? It cannot be, of course. It follows, then, that if the

right to receive an annuity payment of \$1.00 from any party other than an insurance company is presently worth only 75c, say, this is cogent evidence that the right to the same payment from an insurance company is no more valuable and that the Regulation to the contrary is patently capricious, arbitrary and unreasonable and cannot be sustained.

Further evidence of the capricious character of Regulation 81.10(i) also appears from the fact that an ordinary life estate, as distinguished from an annuity, is valued under the same Regulation by means of Table A. Claimant does not understand why a survivor's right to receive annuity payments of \$1,000 for his life under a joint and survivorship annuity contract issued by Blank Insurance Company has far greater value than his right as a life tenant to receive \$1,000 payable annually for his life from Trustee Bank. If Table A and life expectancy would be the measure of value for claimant as life tenant, how can \$1,000 possibly have greater value when paid to him as annuitant by an insurance company instead of by a trustee bank?

In the second place, even the returned value would not be recovered by claimant during his 10-year life expectancy. Claimant has already pointed out that taking into account the fact that \$12,000 of the annual payments under the contracts must be treated as taxable income to him, he would have to live three times longer than his expectancy for full recovery of the adjusted capital value. This same factor is present in the case of the returned value

because claimant would not recover even the full returned value tax free until the expiration of 18 years or a period almost twice as long as his 10-year life expectancy.

Clearly, any capital value placed on the annuity contracts which would not be recovered tax-free by claimant during his life expectancy would be excessive to that extent. It is fair to say, therefore, that any value greater than any \$87,774 would be excessive. This sum of \$87,774 represents the aggregate amounts of the annuity payments to claimant during a 10-year period which will not be subjected to income tax in his hands. No capital value should be attached to the \$12,000 per year income or interest element. A promissory note for \$87,774 payable in 10 annual installments of \$8,774 with interest at the rate of \$12,000 per annum would be valued at \$87,774 under Section 81.10(e) of Regulation 105. If no interest were payable, the same note would be valued at only its commuted value.

The government cannot possibly lose under the returned value because Grant would have to live 8 years longer than, or almost twice as long as, his expectancy for a full return of capital and, if he outlived his expectancy by more than 8 years, all further payments would be subject to income tax in their entirety.

The problem is simply one of valuation of what is, for all practical purposes, a life interest and there is no justification for isolating any single evidentiary factor and discarding all others or in ap-

plying to an annuity issued by an insurance company a different measure of value than is applied to an annuity issued by anyone else or to an ordinary life estate. On the contrary, as Section 81.10(a) of Regulations 105 itself provides, "all relevant facts and elements of value * * * should be considered in every case."

The vice of Section 81.10(i) is twofold: First, it applies an irrelevant measure of value where, as here, comparable contracts are not procurable and, second, it excludes from any consideration all relevant facts and elements of value. The latter vice is apparent from the following statement of the basic issue: What was the fair value on March 2, 1947, of claimant's contractual right to receive the annuity payments for his life, taking into account (1) the fact that his life expectancy was 9.96 years and (2) the fact that each payment is composed of both principal and interest and that, as regards the interest element, an income tax is imposed by law on the portion of each payment equal to 3% of the original cost or, in this case, on \$12,000 or more than half of the amount of the aggregate annual payments? Claimant is convinced that the inequitable whipsaw effect of Section 81.10(i)(2) of Regulations 105 viewed in the light of Section 22(b)(2)A of the Internal Revenue Code would be apparent to any court or jury passing on the valuation issue and claimant proposes, if necessary, to submit the issue to a jury. The unconscionable and unrealistic effect of Section 81.10(i)(2) of the Regulations in this case is too palpable to go unchallenged.

Attorney's Fees

Claimant necessarily has incurred attorney's fees in the preparation of this refund claim and necessarily will incur further attorney's fees and legal disbursements in connection with trial and perhaps appellate court proceedings if this claim is disallowed. The amount of such fees and disbursements is not presently ascertainable and cannot now be established. Claimant at this time claims refund of the additional amount of estate tax to which he will be entitled when the amount of such fees and disbursements has been established. Such amount will constitute a proper deduction from the gross estate (Section 81.34, Regs. 105).

Conclusion

The annuity contracts are not includable in the gross estate under Section 811(c) as amended by the Technical Changes Act of 1949. Even assuming solely for argument that they comprise part of the gross estate, nevertheless their fair value was not greater than the amount at which they were returned. Claimant therefore is entitled to refund of the sum of \$28,356.41 or such greater sum to which he may be entitled on account of the erroneous and illegal assessment with respect to said annuity contracts, as well as such further sum as may be ascertained when his attorney's fees and disbursements are established, together with interest as provided by law.

SPENCER GRANT,
Executor of the Last Will and Testament of
Blanche Kelleher Grant, Deceased.

Attorney's Statement

The undersigned, Edgar T. Zook, 310 Sansome Street, San Francisco, California, prepared the within refund claim on the basis of oral and written information imparted to him by claimant and by the insurance companies therein referred to and on the basis of information obtained from claimant's books of account and records and on the basis of information contained in the files of the undersigned. While the undersigned does not know of his own knowledge whether the statements of fact contained in said refund claim, to the extent that such statements are based on information imparted by claimant or said insurance companies, are true, the undersigned believes them to be true.

Dated: November 26, 1951.

EDGAR T. ZOOK,
Attorney for Claimant.

EXHIBIT A

Estate of Blanche K. Grant
(Schedule E, Item 7)

Valuation of joint and survivor annuities under Table A of Regulations 105, Spencer Grant, surviving annuitant having been born on January 1, 1880, and being 67 years of age on March 2, 1947, the date of decedent's death.

Number of Policy	Company	Annuity Date	Amount of Annuity	Value per	
				Dollar of Annuity	Policy
56921	Connecticut General Life	Mar. 28	\$2,629.00	\$8.14979	\$ 21,425.80
13523	Connecticut Mutual Life	Apr. 1	1,314.25	8.13635	10,693.20
2296	Metropolitan Life	Apr. 1	328.18	8.13635	2,670.19
2297	Metropolitan Life	Apr. 1	984.54	8.13635	8,010.57
972085	Pacific Mutual Life	July 1	1,428.32	7.88366	11,260.39
A121202	Sun Life of Canada	July 1	2,631.58	7.88366	20,746.48
AN18809	Aetna Life	Oct. 1	1,973.40	7.63366	15,064.26
AN18810	Aetna Life	Oct. 1	657.80	7.63366	5,021.42
A21422	Provident Life	Oct. 1	1,313.00	7.63366	10,023.00
A22937	Provident Life	Dec. 31	1,338.25	7.38366	9,881.18
987534	Pacific Mutual Life	Dec. 31	803.23	7.38366	5,930.78
A172793	Sun Life of Canada	Dec. 31		7.38366	19,784.74
2111175	Travelers Insurance Co.	Dec. 31	1,346.72	7.38366	9,943.72
2109941	Travelers Insurance Co.	Dec. 31	1,346.72	7.38366	9,943.72

Total value\$160,399.45

Note: For basis of valuations of annuities, see annexed letter from Coates and Herfurth, independent actuaries, San Francisco, California.

Grant Estate

Present Value of Annual Payments of \$1.00 for Life Age 67. Combined Experience Table and 4% Interest.

Date of First Payment	Value as of March 2, 1947
March 28, 1947.....	\$8.14979
April 1, 1947.....	8.13635
July 1, 1947.....	7.88366
October 1, 1947.....	7.63366
December 31, 1947.....	7.38366
March 2, 1948.....	7.21699

“Present Value” may be defined as the sum of money which, if deposited in a bank, would be just sufficient to provide annual payments for life, provided that interest is credited each year on the balance of the account at the rate shown, and provided that mortality is in accordance with the Table of Mortality used.

I certify that the above figures are the present values as of March 2, 1947, of an annual payment of \$1.00 for the lifetime of a person aged 67, the first payment being made on the date indicated, based on interest at 4% per annum and the Combined Experience Table of Mortality. I also certify that, according to the Combined Experience Table of Mortality, the Expectation of Life for a person aged 67 is 9.96 years.

COATES and HERFURTH,
Consulting Actuaries.

By /s/ G. FRANK WAITES.

San Francisco, California, May 10, 1948.

[Endorsed]: Filed June 2, 1952.

[Title of District Court and Cause.]

DEFENDANT'S ANSWER TO PLAINTIFF'S
COMPLAINT

Now comes the defendant, James G. Smyth, former Collector of Internal Revenue, by Chauncey Tramutolo, United States Attorney for the Northern District of California, his attorney, and for answer to the complaint filed by the plaintiff herein, denies each and every allegation contained in the said complaint that hereinafter in this answer is not admitted, qualified or denied, and for further answer to the plaintiff's complaint, the defendant says:

I.

The allegations of paragraph numbered I of the plaintiff's complaint are admitted.

II.

The defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph numbered II of the complaint.

III.

The allegations of paragraph numbered III of the complaint are admitted.

IV.

The defendant says that the allegations of paragraph numbered IV of the complaint are matters of law, except that the defendant admits that on or about May 26, 1948, the plaintiff filed with the defendant as Collector a federal estate tax return for the estate of the decedent and paid to the defendant

as Collector the sum of \$118,123.25, which was the full amount of tax reported due in said return, and the defendant admits that certain annuity contracts were returned under Item 7 of Schedule E of the estate tax return at the aggregate value of \$160,399.45.

V.

The allegations of paragraph numbered 5 of the complaint are denied, except that the defendant admits that the annuity contracts, which had been purchased by the decedent in 1938 and 1939 from various insurance companies, were single premium non-participating and non-refundable joint and survivor annuity contracts, and the defendant admits that the names of the insurance companies issuing the annuity contracts and the numbers of the annuity contracts appear in the list of such companies and contract numbers in paragraph numbered V of the complaint, and the defendant admits that the amounts of the annuities under the contracts are as appearing in the column headed "Annuity" in paragraph numbered V of the complaint.

VI.

Answering paragraph numbered VI of the complaint, the defendant admits that at the time of the decedent's death the plaintiff was 67 years, 2 months and 2 days old; denies that the value of the annuity contracts at the time of the decedent's death was not greater than the sum of \$160,399.45, and says that the other allegations contained in paragraph numbered VI of the complaint relate to matters about which the defendant is without knowledge or information

sufficient to form a belief as to the truth of the averments.

VII.

The allegations of paragraph numbered VII of the complaint are admitted, except that the defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that "The portion of the proposed deficiency in tax attributable to such adjustment in value was the sum of \$28,356.41."

VIII.

The allegations of paragraph numbered VIII of the complaint are denied. Further answering paragraph numbered VIII, the defendant says that the deficiency assessment of estate taxes in the amount of \$29,235.79 was paid by a payment in the sum of \$1,235.79, plus \$161.89 interest, on August 8, 1950, and that the balance of \$28,000, which had been deposited with the defendant on May 26 1952, with instructions to hold until the matter of a possible deficiency in taxes was settled, was credited on November 1, 1950. The defendant admits that the payment of the deficiency by the plaintiff was made by him without prejudice to his right to demand refund thereof.

IX.

The allegations of paragraph numbered IX of the complaint are denied, except that the defendant admits that on or about November 26, 1951, the plaintiff filed with the Commissioner of Internal Revenue an amended claim for refund in the sum of \$28,356.41.

X.

The allegations of paragraph numbered X of the complaint are admitted.

XI.

The allegations of paragraph numbered XI of the complaint are denied.

XII.

The allegations of paragraph numbered XII of the complaint are denied, except that the defendant admits that neither the whole nor any part of the sum of \$28,356.41, or of any additional sum, has been paid or credited to the plaintiff. Further answering paragraph numbered XII of the complaint, the defendant says that the plaintiff has not overpaid estate taxes and that neither the whole nor any part of the amount of estate taxes paid by the plaintiff are due and owing to the plaintiff, and that the plaintiff is not entitled to a refund in any amount of the estate taxes paid.

Wherefore, the defendant asks that the plaintiff's complaint and alleged cause of action be dismissed, and that costs herein be assessed against the plaintiff.

Dated: November 3, 1952.

/s/ CHAUNCEY TRAMUTOLO,

United States Attorney;

/s/ CHARLES E. COLLETT,

Assistant United States Attorney, Attorneys for Defendant.

[Endorsed]: Filed November 4, 1952.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated, admitted and agreed by both parties hereto that the following facts are true and may be considered by the Court in reaching its decision herein, subject to the right of either party to offer in evidence other facts not inconsistent therewith:

1. Prior to 1938 and at all times thereafter until March 2, 1947, plaintiff and Blanche Kelleher Grant were husband and wife.

2. Plaintiff was born on January 1, 1880, and Mrs. Grant was born on January 26, 1881.

3. Mrs. Grant died on March 2, 1947, a resident of the City and County of San Francisco, State of California. On March 28, 1947, plaintiff was duly appointed and qualified as the executor for her estate and he at all times since March 28, 1947, has been and now is duly appointed, qualified and acting as such executor.

4. On or about May 26, 1948, plaintiff filed with defendant, as the duly appointed, qualified and acting United States Collector of Internal Revenue for the First Collection District of California, the Federal Estate Tax Return for Mrs. Grant's estate and paid to defendant as such Collector the sum of \$118,-123.25, which was the full amount of tax shown due by the return. Certain annuity contracts (hereinafter called the "Grant annuity contracts"), pur-

chased by Mrs. Grant prior to her death were returned under Item 7 of Schedule E of said return at the aggregate value of \$160,399.45 as of March 2, 1947, the date of Mrs. Grant's death.

5. On March 2, 1947, plaintiff was 67 years, 2 months and 2 days old and his remaining life expectancy was 9.96 years under the Actuaries' or Combined Experience Table of Mortality.

6. On or about July 18, 1950, plaintiff was notified by the Bureau of Internal Revenue of a proposed deficiency assessment of estate tax in the aggregate amount of \$29,235.79 with respect to said estate tax return. The proposed deficiency resulted principally but not entirely from adjustment of the aggregate value of the Grant annuity contracts by increasing such value from the returned value of \$160,399.45 to the adjusted value of \$257,117.20.

7. Said proposed deficiency assessment of \$29,235.79, with interest thereon in the sum of \$161.89, was paid by plaintiff to defendant as Collector on September 22, 1950.

8. On or about November 27, 1951, plaintiff filed with the Collector of Internal Revenue his amended claim for refund of the sum of \$28,356.41 and for refund of such additional amount of estate tax to which he will be entitled when the deductible amount of his attorneys' fees and disbursements incurred and to be incurred by him in seeking refund of said sum has been established. A full, true and correct

copy of said amended claim for refund is attached as an exhibit to the complaint on file herein.

It is hereby further stipulated and agreed by both parties hereto that a photostatic copy of the Federal Estate Tax Return filed for Mrs. Grant's estate, a photostatic copy of the Revenue Agent's report proposing a deficiency in estate tax, and photostatic copies of the Grant annuity contracts may be introduced in evidence as joint exhibits without offering the originals and without further proof of the authenticity thereof.

Dated: January 21, 1954.

/s/ EDGAR T. ZOOK,

/s/ HENRY V. COLBY,

McKEON & COLBY,

Attorneys for Plaintiff.

/s/ LLOYD H. BURKE,

United States Attorney;

/s/ GEORGE A. BLACKSTONE,

Assistant United States Attorney, Attorneys for Defendant.

[Endorsed]: Filed January 21, 1954.

[Title of District Court and Cause.]

STIPULATION WAIVING JURY

It is hereby stipulated and agreed by and between the respective parties through their respective counsel that a jury is waived in the above-entitled cause and that the action may be tried by the Court sitting without a jury.

Dated: March 1, 1954.

/s/ EDGAR T. ZOOK,

/s/ HENRY V. COLBY,

Attorneys for Plaintiff.

/s/ LLOYD H. BURKE,

United States Attorney;

/s/ GEORGE A. BLACKSTONE,

Assistant United States Attorney, Attorneys for Defendant.

[Endorsed]: Filed March 1, 1954.

[Title of District Court and Cause.]

OPINION

Hamlin, District Judge.

This is an action by plaintiff, as executor of his wife's will, to recover an alleged overpayment of estate tax. The facts are not in dispute and were stipulated at the trial.

Mrs. Grant purchased fourteen annuities in 1938 and 1939 aggregating in cost \$390,000.00. The insurance companies agreed to pay to Mr. and Mrs. Grant jointly, during Mrs. Grant's lifetime, \$20,744.52 per year. After the death of Mrs. Grant, Mr. Grant if he survived was to receive the same amount per year for the remainder of his life. These contracts were "single premium non-participating and non-refundable joint and survivorship annuity contracts." At the time of the purchase Mrs. Grant was about 58 years of age and Mr. Grant was about 59.

Mrs. Grant died on March 2, 1947, at the age of 67, leaving Mr. Grant surviving her. An estate tax return was filed which included these annuities in the gross estate of Mrs. Grant and valued them at \$160,399.45. This was based on a table of mortality basis as provided in the Treasury Regulations when there are no comparable contracts for purposes of valuation. The government took the position that there were comparable contracts and revalued the annuities at \$257,117.20. The Commissioner assessed a deficiency tax in the amount of \$29,235.79. This was paid, together with interest in the amount of \$161.89, by the estate on September 22, 1950. This action for refund was filed on June 2, 1952.

Plaintiff makes two contentions: First, that the annuities were not includable in the gross estate at all; and Second, that if they were includable, the Commissioner's basis for valuation was wrong. If plaintiff should prevail in its first contention, he

should recover \$29,397.68. The full tax paid cannot be recovered due to the statute of limitations.

If the annuities are to be included in the gross estate, there are three possible valuations that may be used.

If a survivorship contract purchased just prior to Mrs. Grant's death which would pay Mr. Grant \$20,744.52 for his lifetime is a comparable contract, it is stipulated that the valuation of such a contract would be \$60,980.72, and plaintiff should recover \$29,397.68.

If a single life contract purchased by Mr. Grant at or after Mrs. Grant's death which would pay him \$20,744.52 per year for his lifetime, is a comparable contract, it is stipulated that the valuation to be used is \$257,117.20, and plaintiff should recover nothing. (This is the valuation used by the Commissioner.)

If there are no comparable contracts, it is stipulated that they should be valued on an actuarial valuation which is stipulated to be \$160,399.00, and plaintiff should recover \$28,603.43. (This is the valuation used in the estate tax return.)

Includability

At the time of Mrs. Grant's death in 1947, there was no question but that these annuities were includable in her gross estate. 26 U.S.C.A. §811(c) expressly required their inclusion. The plaintiff contends that the Technical Changes Act of 1949 (63

Stat. 891) at Section 7 retroactively changed this.¹ In short, plaintiff contends that this was a transfer “intended to take effect in possession or enjoyment at or after his death” and since the transfer was made prior to October 7, 1949, it is not includable in the gross estate. Plaintiff’s contention is that Mrs. Grant retained no possession or enjoyment in the property and did not have the right to the income from it and therefore it is not includable under Section 811(c) (1) (B).

It is true that under the annuity contracts Mrs. Grant parted with all control over the money transferred. It was not kept in any separate fund, but was commingled with the insurance companies’ general funds. The companies were bound to pay the

¹26 U.S.C.A. §811(c) as amended by §7(a) of the Technical Changes Act of 1949 provides in part:

“Sec. 811. Gross Estate. The value of the gross estate shall be determined by including the value at the time of death of all property * * *.

“(c) (1) General Rule. To the extent of any interest therein of which the decedent has at any time made a transfer * * * by trust or otherwise—

* * *

“(B) under which he has retained for his life * * * the possession or enjoyment of, or the right to the income from, the property * * *; or

“(C) intended to take effect in possession or enjoyment at or after his death.”

Section 811(C) (2) exempts from the gross estate transfers taxed under (C) just above, where no reversionary interest is retained (concededly no such interest was retained by Mrs. Grant) and the transfer was made prior to October 7, 1949.

annuity whether they lost the particular money paid to them or not. Mrs. Grant had no control over the investment of any of the insurance companies' funds. If Mr. and Mrs. Grant had died the day after the last annuity was purchased they would have received nothing. The increased or decreased earning power of money did not affect the sum to which the Grants were entitled.

Were this question presented to the Court for the first time with no prior authority the Court would be inclined to believe that there was considerable merit in plaintiff's contention that this was a transfer intended to take effect in possession or enjoyment after death and not a transfer wherein grantor retained for life any possession or enjoyment thereof or the right to the income therefrom. However, the Ninth Circuit has held, and this is binding on this Court, that such a transfer is includable in the gross estate.² The plaintiff has attempted to distinguish this case and other similar cases³ on the grounds that when they were decided the courts did not have to make a distinction between a retained life interest and an interest to take effect at or after death since both were always includable. However, the language of the Court in the

²Commissioner v. Clise, 9th Cir., 1941, 122 F. 2d 998, cert. den., 315 U.S. 821.

³Mearkle's Estate v. Commissioner, 3rd Cir., 1942, 129 F. 2d 386; Commissioner v. Wilder's Estate, 5th Cir., 1941, 118 F. 2d 281, cert. den., 314 U.S. 634.

Clise case clearly establishes that the court considered that the economic benefits were retained by the purchaser of a joint and survivorship annuity.⁴

For this reason, the Court holds that the annuity contracts purchased by Mrs. Grant were includable in her gross estate under 26 U.S.C.A. §811 (c) (1) (B) as a transfer under which she retained for her life the possession or enjoyment of, or the right to the income from, the property transferred.

Valuation

Having concluded that the annuities were includable in the gross estate, the next question is what was the proper valuation that should have been placed upon them. The pertinent treasury regulation is set out in the margin.⁵

⁴The Court said at page 1003, "Unquestionably Mrs. Clise, the first annuitant, reserved to herself the enjoyment—the economic benefit, of these contracts during her lifetime. This is true, just as surely as though she had created a trust fund with her property—money, and reserved to herself a certain sum annually, to be paid out of income and corpus, with the remainder over. Mrs. Clise reserved to herself the complete enjoyment of her property, during her lifetime, to the extent she desired to enjoy it, relieved of the worry and cares of management, and guaranteed an estate to the object of her bounty after her death. It is clear, therefore, that Mrs. Clise retained to herself the economic benefits of her property during her lifetime."

⁵26 C.F.R. §81.10. Treas. Reg. 105, §81.10. "Valuation of Property. (a) General—* * *. All rele-

The government's position is that what Mr. Grant has now is in effect a single life annuity and the proper basis for valuation is what comparable single life annuities cost. It is stipulated that on March 2, 1947, the cost to Mr. Grant of a single premium life annuity contract paying to him \$20,-774.20 annually for the remainder of his life would have been \$257,117.20.

The plaintiff contends that this does not give a true valuation because it ignores the survivorship aspect of the annuities which in fact existed at the time of Mrs. Grant's death and further does not reflect the true value from an economic benefit standpoint. Plaintiff contends that comparable contracts are survivorship contracts, or, in the alternative,

vant facts and elements of value as of the applicable valuation date should be considered in every case.

* * *

“(i) Annuities, life, remainder and reversionary interests——

* * *

“(2) The value of an annuity contract issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts.

“(3) All other future payments are to be discounted upon the basis of compound interest at the rate of four per cent a year. If the time of payment or of payments is dependent upon the continuation of, or upon the termination of a life or of lives, the Actuaries or Combined Experience Table of Mortality, as extended, and established actuarial principles are to be used in the computation of the present worth.”

* * *

that if there are no comparable contracts, the valuation must be on an actuarial basis.

The Mearkle case, *supra* note (3), is a case where the Court held that the value of similar annuity contracts was the proper method of valuation. There is no definite statement, but it appears from the language of the opinion at Page 388 that single life annuities were used as the "comparable contracts" to survivorship annuities after the death of one of the annuitants. To the same effect is *Estate of John L. Walker*, 1947, 8 T.C. 1107.

There are two Tax Court cases that come to different results than the above cited cases.⁶ In the Higgs case the Tax Court first held a particular survivorship annuity includable. As to value, the Commissioner had used the value of a single life annuity rather than a survivorship annuity. The petitioner claimed that the cost of a survivorship annuity was the true value. This the Court rejected for lack of proof. This proof was later supplied and the Tax Court reduced the Commissioner's valuation from the cost of a single life annuity to the cost of a survivorship annuity. See the Circuit Court opinion at Page 428, footnote (1). The Circuit Court reversed this decision as to the includability, making it unnecessary for it to discuss the valuation. In the

⁶*Estate of Higgs*, 1949, 12 T.C. 280, reversed, *Higgs v. Commissioner*, 3rd Cir., 1950, 184 F. 2d 427; *Estate of Twogood*, 1950, 15 T.C. 989, *aff'd.*, *Commissioner v. Twogood*, 2nd Cir., 1952, 194 F. 2d 627.

Twogood case, in its Findings of Fact at Page 992, the Tax Court fixed the valuation as the cost of a survivorship annuity at the date of death rather than a single life annuity. However, there was no other discussion of valuation since the Court's decision was that the particular annuity was not includable in the gross estate. (The facts in the Twogood case are very similar to those in the Higgs case.)

From an economic benefit standpoint, it appears to this Court that neither single life nor survivorship annuities are comparable to what Mr. Grant received at his wife's death. Under the income tax laws, three per cent of the cost of the annuities (\$390,000.00) must be reported as income each year. Thus, \$11,700.00 of the \$20,774.20 received each year by Mr. Grant is subject to income tax. If, as is contended by the government, the true valuation is the cost of single life annuities, the holder of \$257,117.20 worth of annuities would have to pay a tax on about \$7,713.00 of his \$20,774.00 annual return, or about \$4,000.00 less than what Mr. Grant actually pays tax on. From an income tax standpoint, it appears that the "comparable contracts" the government uses are much more valuable than what Mr. Grant actually has.⁷ It is not enough to say that the income tax statutes are not in *pari materia* with estate tax statutes. Income tax consequences are "relevant

⁷Income tax statutes have now remedied this situation [18 U.S.C.A. §22(b) (2) (C)], but the remedy is not applicable to this estate.

facts and elements of value''⁸ which the regulations say are to be considered in the valuation of annuities.

Without considering interest, Mr. Grant would have to live about thirteen years after his wife's death to recover his principal if the government's valuation were used. This is about 30 per cent greater than his actual life expectancy at the time of his wife's death. If interest is considered, the length of time Mr. Grant would have to live to recover his principal is greatly extended.

A survivorship contract purchased just before Mrs. Grant's death would cost \$60,980.72. Such a contract, for income tax purposes, might be more valuable for a few years to Mr. Grant than what he has, but thereafter it would be less valuable because after the return of its cost all of the income would be taxable annually for income tax purposes.

Of course, also, each of the parties was considerably older on March 2, 1947, than when the survivorship contracts were first purchased, and their life expectancies had correspondingly changed.

This Court does not believe that such a survivorship contract is "comparable" to what was purchased by decedent in 1938 and 1939, or to what Mr. Grant received by reason of decedent's death in 1947.

The Court is not unmindful of the Treasury Regu-

⁸See Treas. Reg. 105 set out in the margin on Page 6.

lation which says that the value of annuities is to be determined by the value of comparable annuities⁹ and makes no attack on the validity of this regulation.¹⁰ But the regulation says value is to be established by “comparable contracts.” If this means comparable in type, certainly the single life contract is not comparable to the survivorship contract. If it means comparable in value, neither the single life nor the survivorship contracts are comparable to what Mr. Grant now has. When there is no comparable contract, other methods of valuation must be resorted to.¹¹

Conclusion

The Court concludes therefore that the true value of the annuity contracts as of the date of Mrs. Grant's death is represented by the Actuaries or Combined Experience Table of Mortality and established actuarial principles as set out in Treasury Regulation 105, Section 81.10 (a)(i)(3). See footnote (5) at Page 6. This value has been stipulated to be \$160,399.45. At even a small rate of interest, in order to recover this “principal,” Mr. Grant will have to live many years past his life expectancy.

It is hereby ordered that judgment be in favor of

⁹See Treas. Reg. 105 set out in the margin on Page 6.

¹⁰*Meerkle's Estate v. Comm.*, 3rd Cir., 1942, 129 F. 2d 386.

¹¹Treas. Reg. 105, §81.10 and 81.10(a)(i)(3) on Page 6.

plaintiff and against defendant in the sum of \$28,603.43, together with interest and the costs of this suit.

Let plaintiff prepare judgment to conform to the above opinion.

Dated: June 30, 1954.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed July 1, 1954.

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

Civil No. 31582

SPENCER GRANT, Executor of the Last Will
and Testament of BLANCHE KELLEHER
GRANT, Deceased,

Plaintiff,

vs.

JAMES G. SMYTH, Former Collector of Internal
Revenue,

Defendant.

JUDGMENT

This action came on regularly for trial before the above-entitled Court, the Honorable O. D. Hamlin, judge thereof, presiding without a jury, on March 26, 1954. The plaintiff appeared by Henry V. Colby, Esq., and the defendant appeared by George A.

Blackstone, Esq., Assistant United States Attorney. The cause was argued and duly submitted to the Court for decision and judgment. The Court has fully considered the matter, including the briefs filed by the respective parties, and has filed and entered herein its memorandum Opinion containing its findings of fact and conclusions of law and ordering that judgment be in favor of plaintiff and against defendant in the sum of \$28,603.43, together with interest and costs of this suit;

It Is, Thereupon, Ordered and Adjudged that plaintiff, Spencer Grant, as Executor of the Last Will and Testament of Blanche Kelleher Grant, Deceased, do have and recover from the defendant, James G. Smyth, former Collector of Internal Revenue, the sum of \$28,603.43, together with interest thereon at the rate of 6% per annum from September 22, 1950, to a date preceding the date of the refund check by not more than thirty days, and together with plaintiff's cost of suit herein incurred in the sum of \$39.00.

Done in open Court this 14th day of July, 1954.

/s/ O. D. HAMLIN,

United States District Judge.

Approved as to form, as provided in Rule 5(d).

/s/ GEORGE A. BLACKSTONE,

Assistant United States

Attorney.

[Endorsed]: Filed July 14, 1954.

Entered: July 15, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL BY PLAINTIFF

Notice is hereby given that Spencer Grant, as Executor of the Last Will and Testament of Blanche Kelleher Grant, Deceased, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on July 15, 1954.

/s/ EDGAR T. ZOOK,

/s/ HENRY V. COLBY,

McKEON & COLBY,

Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 9, 1954.

[Title of District Court and Cause.]

COST BOND

Know All Men by These Presents:

That Spencer Grant, Executor of the Last Will and Testament of Blanche Kelleher Grant, Deceased, as Principal, and Pacific Indemnity Company, a California corporation, as Surety, are held and firmly bound unto James G. Smyth, former Collector of Internal Revenue, in the full and just sum of Two Hundred Fifty and No/100 Dollars (\$250.00), to be paid to the said James G. Smyth, former Collector of Internal Revenue, his succes-

sors and assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents, and

Whereas, Spencer Grant, Executor of the Last Will and Testament of Blanche Kelleher Grant, Deceased, is about to take an appeal to the United States Court of Appeals for the Ninth Circuit to reverse an order of the Honorable O. D. Hamlin, United States District Judge of the above-entitled Court, signed and filed on July 14, 1954.

Now, Therefore, the condition of the above obligation is such that if said Spencer Grant, Executor of the Last Will and Testament of Blanche Kelleher Grant, Deceased, shall prosecute its said appeal to effect and answer all costs which may be adjudged against him if he fails to make good his appeal, then this obligation shall be void; otherwise to remain in full force and effect.

Signed, Sealed and Dated this 8th day of September, 1954.

/s/ SPENCER GRANT,
Executor of the Last Will and Testament of Blanche
Kelleher Grant, Deceased.

PACIFIC INDEMNITY
COMPANY,

By /s/ J. W. MAYNARD, JR.,
Attorney-in-Fact.

Approved:

.....,
Judge.

State of California,
City and County of San Francisco—ss.

On this 8th day of September in the year one thousand nine hundred and fifty-four before me, Emily K. McCorry, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared J. W. Maynard, Jr., known to me to be the duly authorized Attorney-in-Fact of Pacific Indemnity Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said J. W. Maynard, Jr., acknowledged to me that he subscribed the name of Pacific Indemnity Company, thereto as surety and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] /s/ EMILY K. McCORRY,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires December 21, 1954.

[Endorsed]: Filed Sept. 9, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL BY DEFENDANT

Notice Is Hereby Given that defendant James G. Smyth hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on July 15, 1954.

LLOYD H. BURKE,
United States Attorney;

By /s/ GEORGE A. BLACKSTONE,
Assistant United States Attorney, Attorneys for
Defendant James G. Smyth.

[Endorsed]: Filed Sept. 10, 1954.

[Title of District Court and Cause.]

STIPULATION DESIGNATING CONTENTS OF RECORD ON APPEAL

Plaintiff and defendant both having appealed from the final judgment entered in this action on July 15, 1954, they hereby stipulate that the record on appeal shall include the following:

- (1) Complaint;
- (2) Answer to Complaint;
- (3) Stipulation of Facts;
- (4) Reporter's Transcript;
- (5) Joint Exhibits 1 through 16, both inclusive,
and Plaintiff's Exhibit 17;
- (6) The Opinion of the Court, dated June 30,

1954, which contains the Court's findings of fact, conclusions of law and direction for entry of judgment thereon;

(7) The Judgment entered herein on July 15, 1954;

(8) Plaintiff's and defendant's respective Notices of Appeal with dates of filing;

(9) This Stipulation.

/s/ EDGAR T. ZOOK,

/s/ HENRY V. COLBY,

McKEON & COLBY,

Attorneys for Plaintiff-Appellant Spencer Grant.

/s/ LLOYD H. BURKE,

United States Attorney;

/s/ GEORGE A. BLACKSTONE,

Assistant United States Attorney, Attorneys for Defendant-Appellant James G. Smyth.

[Endorsed]: Filed Sept. 21, 1954.

The United States District Court, Northern District
of California, Southern Division

No. 31582

SPENCER GRANT, Executor of the Last Will
and Testament of BLANCHE KELLEHER
GRANT, Deceased,

Plaintiff,

vs.

JAMES G. SMYTH, Former Collector of Internal
Revenue,

Defendant.

REPORTER'S TRANSCRIPT

Friday, March 26, 1954

Appearances:

For the Plaintiff:

McKEON & COLBY,
SLACK & ZOOK, by
HENRY V. COLBY, ESQ.

For the Defendant:

LLOYD H. BURKE,
United States Attorney, by
GEORGE A. BLACKSTONE,
Assistant United States Attorney.

* * *

Mr. Colby: The stipulation of facts provides that we may introduce in evidence as joint exhibits photostats of the annuity contracts involved in this case. There are 14 of them. I am going to say, your

Honor, as a matter of shortening time, that they be offered in evidence to be marked, respectively, as joint exhibits Nos. 1 through 14.

The Court: Is that agreeable, counsel?

Mr. Blackstone: That is agreeable, your Honor.

Mr. Colby: And for the information of the Reporter or the Clerk, each one has a pencil numeral on the back and if they are marked in that order they will be alphabetical and chronological.

(Thereupon photostatic copies of the following-described contracts were received in evidence and marked as indicated: [23*])

(Joint Exhibit 1—Aetna Life Insurance Company of Hartford, Connecticut, No. AN-18809.

(Joint Exhibit 2—Aetna Life Insurance Company of Hartford, Connecticut, No. AN-18810.

(Joint Exhibit 3—Connecticut General Life Insurance Company, Hartford, Connecticut, No. 56921.

(Joint Exhibit 4—The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, No. 13523.

(Joint Exhibit 5—Metropolitan Life Insurance Company, No. 296-AB-2.

(Joint Exhibit 6—Metropolitan Life Insurance Company, No. 2297-AB-2.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Joint Exhibit 7—Pacific Mutual Life Insurance Company, No. 972085.

(Joint Exhibit 8—Pacific Mutual Life Insurance Company, No. 987534.

(Joint Exhibit 9—The Prudential Insurance Company of America, No. A-21422.

(Joint Exhibit 10—The Prudential Life Insurance Company of America, No. A-22937.

(Joint Exhibit 11—Sun Life Assurance Company of Canada, No. A-121202.

(Joint Exhibit 12—Sun Life Assurance Company of Canada, No. A-122793. [24]

(Joint Exhibit No. 13—The Travelers Insurance Company, Hartford, Connecticut, No. 2109941.

(Joint Exhibit No. 14—The Travelers Insurance Company, Hartford, Connecticut, No. 2111175.)

Mr. Colby: Secondly, we are offering in evidence as a joint exhibit a photostatic copy of the Grant estate tax return.

At this point I do wish to ask Government counsel if it is not correct that the insurance company letters and statements attached to the return and setting forth the costs for contracts bearing numbers similar to those in exhibits as Joint Exhibits 1 through 14 are the costs of what we are calling for convenience single life contracts?

Mr. Blackstone: Yes; that is correct.

Mr. Colby: At this point, your Honor, and for the record, I wish to interpose an objection to the introduction in evidence of these insurance company statements and letters to which I have referred which give the costs of single life contracts on the ground that those costs are irrelevant and immaterial. I base that objection, of course, on the score that the true measure of value, if we adopt the comparable contract rule, is the cost of survivorship contracts. The objection goes to the heart of that valuation issue, and I suggest to the Court to defer its ruling until the case is decided because the decision of the case [25] will determine whether that ruling is valid or not.

In other words, I am merely saying I object to the evidence of the cost of single life contracts because the true measure is the cost of survivorship contracts, and Mr. Blackstone, I believe, is going to correspondingly object to my letters from the insurance companies giving the cost of survivorship contracts. It is a technical objection in a way and yet it must be made, I suppose, and I suggest that the Court defer its ruling until the case is decided because the decision of the case is by definition going to determine whether one or the other is immaterial.

The Court: I don't know that that would be the Court's ruling. Just considering it now, no matter what determination the Court might make in reaching that determination, it might be proper for him to consider the costs one way or the other of either side, and for that reason they would be admissible,

although whatever answer the Court came to might be one way or the other.

Mr. Colby: Your Honor, I am prepared to state my agreement with that. I believe myself that the Court should properly have before it the costs of both types of contracts and then make its determination as to which type of contract is comparable. I only make the objection at this moment to the Government's records here of the costs of single life contracts because the Government is going to [26] make a corresponding objection. If the Court is prepared to overrule my objection and correspondingly overrule the Government's objection, I am going to withdraw my objection.

The Court: That would be my thought, that both of them should go in.

Mr. Blackstone: That is agreeable. We raised this point, Mr. Coby and I, in discussing how the case should be presented, because of the view from the tax division of the Attorney General's Office that the cost basis asserted by Mr. Colby is incorrect, and they suggested that we object to the introduction of such evidence, but it is as——

The Court: Both of you maintain your positions. Why don't you leave your objections there and I will rule—overrule both of them, and admit it?

Mr. Coby: I withdraw my objection, your Honor.

The Court: And you follow your Attorney General's suggestion—and you have made your objection. The cost of these single life contracts is contained in letters in the estate tax return exhibit?

Mr. Colby: Yes, your Honor.

The Court: Then you are offering the estate tax return the next exhibit in order?

Mr. Colby: I am, pursuant to stipulation, but the copy the Government has furnished was prepared in Washington and [27] has a blue ribbon connecting to the return a variety of other papers, including these life insurance company letters.

The Court: Is there anything else except——

Mr. Colby: The only thing to which the objection pertains is the insurance company letters and in some instances forms 712 from the insurance companies referring by number to the identical annuity contracts in evidence already as Joint Exhibits 1 through 14, because there were in addition to these annuity contracts some life insurance policies and there are attached to this return some forms 712 from the life insurance companies with respect to the life insurance contracts. Of course those have no bearing in this case. The objection goes only to the ones pertaining to the annuity contracts now in evidence.

The Court: The Exhibit may be admitted and marked Joint Exhibit 15.

(Thereupon estate tax return with accompanying statements and letters, was received in evidence and marked Joint Exhibit No. 15.)

Mr. Colby: There has also been stipulated, if your Honor please, there may be offered in evidence as Joint Exhibit 16, a photostatic copy of the Revenue Agent's deficiency report dated July 18, 1950.

The Court: That may be admitted and take that number.

(Thereupon Revenue Agent's report, as [28] per stipulation, was received in evidence and marked Joint Exhibit No. 16.)

Mr. Colby: I next offer in evidence a group of letters from the same insurance companies which issued these contracts and also the same companies of course, which furnished the letters and statements to which I have objected, which are attached to the return from these companies giving the costs of survivorship contracts.

Do you want to make an objection before I offer them?

Mr. Blackstone: Your Honor, I do not object to the lack of authentication of the letters. We will concede that they may be taken in evidence without further authentication. We do make the objection on the ground of relevancy, just as Mr. Colby made the objection to the letters attached to the estate tax on the ground of irrelevancy.

The Court: The objection may be overruled and the exhibit may be marked Joint Exhibit 17.

Mr. Blackstone: May it please your Honor, may those be marked as Plaintiff's own exhibit rather than as a joint exhibit?

The Court: Plaintiff's Exhibit 17.

(Thereupon group of letters re costs of survivorship contracts was received in evidence and marked Plaintiff's Exhibit No. 17.) [28]

Mr. Colby: I believe it is correct, Mr. Blackstone, that the last paragraph of each of these letters states:

“We have previously furnished you with the amount of the gross premium we would have charged on March 2, 1947, for single life annuity contracts,”

and so forth, and that reference to single life contract costs are the costs set forth in the letters and statements to which I have objected, which are attached to the return?

Mr. Blackstone: That is correct.

Mr. Colby: For the record, I would like to have Government counsel's concession that the Government is not making any contention that there was any transfer here in contemplation of death.

Mr. Blackstone: We will concede that, your Honor.

Mr. Colby: So that if these annuity contracts were includable in Mrs. Grant's gross estate, it was because they either represented a postponed enjoyment transfer to Mr. Grant or a retained enjoyment transfer by Mrs. Grant under 811(c).

May I have your agreement, also, Mr. Blackstone, that you and I arranged with the local office of the Estate Tax Audit Division to compute the amount of the overpayment and that on the basis of the computation made by the Audit Division the maximum recovery, if we should prevail either [30] on our excludability argument or on our survivorship contract evaluation argument, was \$29,397.68, and that

if we should prevail only, if at all, on our actuarial formula valuation argument, the maximum recovery would be \$28,603.43?

Mr. Blackstone: Those figures are correct.

Mr. Colby: The complaint prays for recovery of a slightly lesser amount, to wit, \$28,356.41, and I suggest that as a matter of convenience at this time that instead of moving to amend the complaint on its face, if the plaintiff should recover judgment, that it not be agreed that if the plaintiff should recover judgment for either of the amounts just previously mentioned, that the complaint and the answer correspondingly may be deemed amended accordingly to conform to proof.

Mr. Blackstone: I think that is all right, your Honor.

The Court: All right. [31]

* * *

JOINT EXHIBIT No. 1

(Filed March 26, 1954)

Ages: 59

57 11/12

The Aetna Life Insurance Company
of Hartford, Connecticut
(herein called the Company)

No. AN 18-809

Annuity Payment
\$1,973.40 Annually

(1) In Consideration of the applications for this contract, which applications are hereby made a part hereof and copies of which are attached hereto, and in further consideration of the single premium of Thirty-eight Thousand Fifteen Dollars and Ninety-five Cents to be paid to the Company upon delivery of this contract, which delivery shall be a receipt for such premium,

(2) Hereby Agrees to Pay One Thousand Nine Hundred Seventy-three & 40/100th Dollars at its Home Office if Spencer Grant of San Francisco, California or Blanche Kelleher Grant of San Francisco, California, (herein called the annuitants), shall be living on the first day of October, one thousand nine hundred and thirty-nine, and to pay a like amount at the same place on the same day of each succeeding October during the lifetime of any one of the annuitants, provided that at every such payment satisfactory proof shall be furnished to the Company that at least one of the annuitants be then

living, and that such payments shall terminate with the last payment preceding the death of the last survivor of the annuitants.

At the death of the last survivor of the annuitants this contract shall become null and void and the premium paid hereon shall remain the property of the Company.

(3) Each annuity payment becoming due under this contract shall be payable when due to said Blanche Kelleher Grant or said Spencer Grant, Provided However, that no annuity payments shall be payable to any annuitant who is then deceased.

(4) This contract and the applications herefor constitute the entire contract between the parties hereto and it shall be incontestable after it has been in force during the lifetime of the annuitants for a period of two years from its date of issue; but if there has been any misstatement of age in the applications herefor, the amount payable hereunder shall be such an amount as the premium paid would have purchased at the Company's rate now in use for the correct ages.

(5) The reserve for which funds are to be held upon this contract shall be computed on the basis of the Combined Annuity Tables with interest at four per centum per annum.

(6) This contract shall not be entitled to share in the surplus earnings of the Company.

Single Premium.

Non-Participating.

Joint and Survivor Annuity.

JOINT EXHIBIT No. 2

(Filed March 26, 1954)

Ages: 59

57 11/12

The Aetna Life Insurance Company
of Hartford, Connecticut
(herein called the Company)

No. AN 18 810

Annuity Payment
\$657.80 Annually

(1) In Consideration of the applications for this contract, which applications are hereby made a part hereof and copies of which are attached hereto, and in further consideration of the single premium of Eleven Thousand Nine Hundred Eighty-four Dollars and Five Cents to be paid to the Company upon delivery of this contract, which delivery shall be a receipt for such premium,

(2) Hereby Agrees to Pay Six Hundred Fifty-seven & 80/100ths Dollars at its Home Office if Spencer Grant of San Francisco, California, or Blanche Kelleher Grant of San Francisco, California, (herein called the annuitants), shall be living on the first day of October, one thousand nine hundred and forty, and to pay a like amount at the same place on the same day of each succeeding October during the lifetime of any one of the annuitants, provided that at every such payment satisfactory proof shall be furnished to the Company that at least one of the annuitants be then living, and

that such payments shall terminate with the last payment preceding the death of the last survivor of the annuitants.

At the death of the last survivor of the annuitants this contract shall become null and void and the premium paid hereon shall remain the property of the Company.

(3) Each annuity payment becoming due under this contract shall be payable when due to said Blanche Kelleher Grant or said Spencer Grant, Provided However, that no annuity payments shall be payable to any annuitant who is then deceased.

(4) This contract and the applications herefor constitute the entire contract between the parties hereto and it shall be incontestable after it has been in force during the lifetime of the annuitants for a period of two years from its date of issue; but if there has been any misstatement of age in the applications herefor, the amount payable hereunder shall be such an amount as the premium paid would have purchased at the Company's rate now in use for the correct ages.

(5) The reserve for which funds are to be held upon this contract shall be computed on the basis of the Combined Annuity Tables with interest at four per centum per annum.

(6) This contract shall not be entitled to share in the surplus earnings of the Company.

Single Premium

Non-Participating.

Joint and Survivor Annuity.

JOINT EXHIBIT No. 3

(Filed March 26, 1954)

Connecticut General Life Insurance Company
Hartford, Conn.

Hereby agrees to pay at its Home Office in Hartford, Connecticut: to Spencer Grant and Blanche K. Grant equally, or to the survivor (hereinafter called the Annuitants) \$646.24 on March 28, 1939, if the said Annuitants, or either one of them be then living, and the sum of Twenty-six Hundred Twenty-nine and No/100 Dollars on the 28th day of March, 1940, if the said Annuitants or either one of them be then living, and a like amount annually thereafter during the subsequent lifetime of the said Annuitants.

The consideration for this contract is the application, a copy of which is attached hereto and made a part of this contract, and the payment in advance of the single premium of \$50,000.00.

Benefits and Provisions

Payment of Premium.

This contract shall not take effect until the single premium is actually paid as hereinafter provided.

The premium is due and payable in advance at the Home Office or to an authorized agent of the Company in exchange for the Company's receipt signed by the President or Secretary and countersigned by the agent designated therein.

Non-Participation.

This contract is not entitled to share in surplus distribution.

Income Payments.

The Company will make each income payment by check which must be personally endorsed by the Annuitants, or other evidence of the survival of one of the Annuitants must be furnished.

Incontestability.

This contract shall be incontestable after one year from its date of issue except for non-payment of premium but if the age of either of the Annuitants has been misstated, the amount payable hereunder shall be such as the actual money paid would have purchased at the correct ages; any over-payment by the Company, with compound interest thereon at 6% per annum, shall be charged against the payments to be made after adjustment.

Assignment.

The Company shall not be affected by any assignment of this contract until the original assignment or certified copy thereof shall be delivered at its Home Office; and the Company does not assume responsibility for the validity or sufficiency of any assignment.

General Provisions.

This contract and the application therefor constitute the entire contract between the parties and

all statements made in the application shall, in the absence of fraud, be deemed representations and not warranties. No statement shall be used in defense of a claim under this contract unless it is contained in the written application and a copy of the application is attached to this contract when issued.

Only the President, Vice President, Secretary or Assistant Secretary has power in behalf of the Company to make or modify this contract.

Reserve.

The reserve on this contract is based on the Modified American Annuitants' Tables with interest at the rate of 3% per annum.

In Witness Whereof the Connecticut General Life Insurance Company has caused this contract to be executed at its office in the city of Hartford, the 28th day of December, 1938.

[Officers' signatures.]

/s/ J. B. WILDE,
President.

Number 56921

Ages: 58 11/12

57 11/12

Single Premium Life Annuity. Non-Participating.
Payable During Lifetime of Last Survivor.

JOINT EXHIBIT No. 4

(Filed March 26, 1954)

The Connecticut Mutual Life Insurance Company
of Hartford, Connecticut
Established 1846

No. 13,523

Ages: 58 11/12

57 11/12

Agrees to Pay

an Income of \$335.86 on April 1, 1939, and Thirteen Hundred Fourteen and 25/100 Dollars Annually thereafter to Spencer Grant and Blanche K. Grant (herein called the Annuitants) jointly, and to the survivor of them, beginning on the 1st day of April, 1940, if either or both of the Annuitants be then living, and terminating with the last payment due prior to the death of the survivor of the Annuitants. If both of the Annuitants shall die prior to the 1st day of April, 1939, no payment shall be made by the Company on account of this Contract.

Ages of Annuitants.

If the age of either of the Annuitants has been misstated any sum payable hereunder shall be such as the premium paid would have purchased at the correct age. Any overpayments by the Company on account of misstatement of age shall, with interest at a rate to be determined by the Company not exceeding 6% per annum, be charged against the current or next succeeding payments to be made by the Company under this Contract.

Reserves.

The reserves on this Contract are based upon the American Annuitants Mortality Table and 3% compound interest.

Evidence of Contract.

This Contract shall constitute the entire contract between the parties.

Settlement.

Any and every sum due under this Contract shall be payable only at the Home Office of the Company in Hartford, Connecticut.

This Contract is made in consideration of the Payment of the Single Premium of \$25,000.00, receipt of which is hereby acknowledged.

In Witness Whereof, The Connecticut Mutual Life Insurance Company has caused this Contract to be executed at Hartford, Connecticut, this 2nd day of January, A.D. 1939.

[Officers' signatures.]

Single Premium Life Annuity.

Joint and Survivor.

Non-Participating.

JOINT EXHIBIT No. 5

(Filed March 26, 1954)

Metropolitan Life Insurance Company

No. 2296 A.B. 2

Joint and Survivor Annuity

Ages: $57\frac{3}{4}$ & $58\frac{3}{4}$

Purchase Price: \$6,521.46

Annuity of: \$328.18

In Consideration

of Sixty-five Hundred Twenty-one & 46/100 Dollars,

Promises to Pay

at the Home Office of the Company in the City of New York to Blanche Kelleher Grant of San Francisco, County of San Francisco, State of California, and to Spencer Grant of San Francisco, County of San Francisco, State of California (herein called the Annuitants), jointly, and, after the first death, to the survivor of them during the lifetime of such survivor, an Annuity of Three Hundred Twenty-eight & 18/100 Dollars, in equal annual payments of Three Hundred Twenty-eight & 18/100 Dollars each, the first payment to be made on the 1st day of April, One Thousand Nine Hundred and Thirty-nine, if either of the Annuitants is then living, and subsequent payments on the 1st day of each April thereafter, said Annuity terminating with the last annual

payment preceding the death of the last surviving Annuitant.

It Is Agreed that said Company shall be furnished with evidence that both or either of the Annuitants is living on each and every date on which an Annuity payment falls due and that no payment will be made until such evidence shall have been received, and that upon the death of the surviving Annuitant there shall be no proportionate payment of this Annuity to the day of such death.

This Annuity is granted upon the declaration that said Annuitants were aged 57 years and 58 years, respectively, at the last anniversaries of their birth, having been born on the 26th day of January, One Thousand Eight Hundred Eighty-one and on the 1st day of January, One Thousand Eight Hundred Eighty respectively, and that if such declaration shall be found untrue then the amount of Annuity payable under this contract shall be such as the actual money paid would have purchased at their true ages; any overpayment or overpayments by the Company, with interest thereon, shall be charged against the payments to be made after adjustment.

This contract does not participate in the surplus of the Company. No person except an Executive Officer (President, Vice-President, Secretary or Actuary) of the Company has power to modify this contract of which the provisions on next page are a part.

In Witness Whereof, the Company has caused

this contract to be executed this 28th day of December, 1938.

[Officers' signatures.]

Single Payment Joint and Survivor Annuity
Non-participating

JOINT EXHIBIT No. 6
(Filed March 26, 1954)

Metropolitan Life Insurance Company

No. 2297 A.B. 2

Joint and Survivor Annuity

Ages: $57\frac{3}{4}$ & $58\frac{3}{4}$

Purchase Price: \$18,478.54

Annuity of: \$984.54

In Consideration
of Eighteen Thousand Four Hundred Seventy-eight
and 54/100 Dollars,

Promises to Pay
at the Home Office of the Company in the City of
New York to Blanche Kelleher Grant of San Francisco,
County of San Francisco, State of California,
and to Spencer Grant of San Francisco, County of
San Francisco, State of California (herein called

the Annuitants), jointly, and, after the first death, to the survivor of them during the lifetime of such survivor, an Annuity of Nine Hundred Eighty-four and 54/100 Dollars, in equal annual payments of Nine Hundred Eighty-four and 54/100 Dollars each, the first payment to be made on the 1st day of April, One Thousand Nine Hundred and Forty, if either of the Annuitants is then living, and subsequent payments on the 1st day of each April thereafter, said Annuity terminating with the last annual payment preceding the death of the last surviving Annuitant.

It Is Agreed that said Company shall be furnished with evidence that both or either of the Annuitants is living on each and every date on which an Annuity payment falls due and that no payment will be made until such evidence shall have been received, and that upon the death of the surviving Annuitant there shall be no proportionate payment of this Annuity to the day of such death.

This Annuity is granted upon the declaration that said Annuitants were aged 57 years and 58 years, respectively, at the last anniversaries of their birth, having been born on the 26th day of January, One Thousand Eight Hundred Eighty-one and on the 1st day of January, One Thousand Eight Hundred Eighty respectively, and that if such declaration shall be found untrue then the amount of Annuity payable under this contract shall be such as the actual money paid would have purchased at their

true ages; any overpayment or overpayments by the Company, with interest thereon, shall be charged against the payments to be made after adjustment.

This contract does not participate in the surplus of the Company. No person except an Executive Officer (President, Vice-President, Secretary or Actuary) of the Company has power to modify this contract of which the provisions on next page are a part.

In Witness Whereof, the Company has caused this contract to be executed this 28th day of December, 1938.

[Officers' signatures.]

Single Payment Joint and Survivor Annuity
Non-participating

JOINT EXHIBIT No. 7
(Filed March 26, 1954)

Number 972085

Pacific Mutual Life Insurance Company
Will Pay

Annuity.

Fourteen Hundred Twenty-eight and 32/100 Dollars at its Home Office in Los Angeles, California, to Spencer Grant and Blanche Kelleher Grant, jointly

or to the survivor, herein called the Annuitants, on the first day of July, 1940, if the Annuitants, or either of them, be then living, and a like amount on the first day of July in each year thereafter during the life of the Annuitants, or of either of them; payments hereunder to terminate with the last payment due prior to the death of the survivor of the Annuitants, provided, however, as follows:

Misstatement of Date of Birth.

That this Annuity is granted and accepted on the understanding that the Annuitants were born on January 1, 1880, and January 26, 1881, respectively.

That should the date of birth of either of the Annuitants be found to have been misstated, then all payments shall be such as the premium paid would have purchased at the correct ages, and any over-payments or under-payments by the Company resulting from such misstatement, together with Compound interest at 6% per annum, shall be charged against or added to the first payment or payments to be made after such adjustment;

Payment of Premium.

That the premium for this Annuity is due and payable in advance at the Home Office of the Company, but may be paid to any agent of the Company producing a receipt therefor signed by the President, a Vice-President, the Secretary or an Assistant Secretary and countersigned by such agent;

Reserve Basis.

That the reserve held by the Company on this Annuity shall be computed on the Combined Annuity Tables of Mortality with interest at $3\frac{1}{2}\%$ per annum;

Non-Participation.

That this Annuity shall not participate in the surplus earnings of the Company;

Agents.

That agents are not authorized to make, alter or discharge contracts;

Assignment.

That any assignment of this Annuity must be made in writing and that the Company shall not be deemed to have knowledge of any assignment unless the original or a duplicate thereof is filed at the Home Office of the Company and its receipt duly acknowledged; That the Company assumes no responsibility for the validity of any assignment;

Evidence that Annuitants Are Living.

That due proof that the Annuitants, or either of them, are living shall, if required by the Company, be furnished before each payment hereunder shall be made.

Assets Segregation.

The Company conducts a participating life department, a non-participating life department (in which this Annuity is issued) and an accident and health

department. The assets of the non-participating life department and of the accident and health department, to the extent of the reserves required on their respective contract liabilities, and all assets of the participating life department after providing for operating and fixed charges, are held for the benefit and security of the contract holders of each department, respectively. The assets representing corporate capital and corporate surplus are further security for all contracts and other liabilities of the Company.

Premium.

This Annuity is issued in consideration of the application therefor and of the payment in advance of the single premium of Twenty-five Thousand Dollars.

The application for this Annuity, a copy of which is attached hereto and made a part hereof, with this page, constitutes the entire contract between the parties.

In Witness Whereof Pacific Mutual Life Insurance Company has, by its proper officers, signed this Contract at Los Angeles, California, as of the first day of January, 1939, its date of issue.

[Officers' signatures.]

Non-Participating.

Single Premium.

Joint and Survivor Annuity.

JOINT EXHIBIT No. 8

(Filed March 26, 1954)

Number 987534

Pacific Mutual Life Insurance Company

Will Pay

Annuity.

Eight Hundred Three and 23/100 Dollars at its Home Office in Los Angeles, California, to Spencer Grant and Blanche Kelleher Grant, jointly or to the survivor, herein called the Annuitants, on the thirty-first day of December, 1940, if the Annuitants, or either of them, be then living, and a like amount on the thirty-first day of December in each year thereafter during the life of the Annuitants, or of either of them; payments hereunder to terminate with the last payment due prior to the death of the survivor of the Annuitants, provided, however, as follows:

Misstatement of Date of Birth.

That this Annuity is granted and accepted on the understanding that the Annuitants were born on January 1, 1880, and January 26, 1881, respectively.

That should the date of birth of either of the Annuitants be found to have been misstated, then all payments shall be such as the premium paid would have purchased at the correct ages, and any overpayments or underpayments by the Company resulting from such misstatement, together with com-

pound interest at 6% per annum, shall be charged against or added to the first payment or payments to be made after such adjustment;

Payment of Premium.

That the premium for this Annuity is due and payable in advance at the Home Office of the Company, but may be paid to any agent of the Company producing a receipt therefor signed by the President, a Vice-President, the Secretary or an Assistant Secretary and countersigned by such agent;

Reserve Basis.

That the reserve held by the Company on this Annuity shall be computed on the 1937 Standard Annuity Table of Mortality with interest at 3% per annum;

Non-Participation.

That this Annuity shall not participate in the surplus earnings of the Company;

Agents.

That agents are not authorized to make, alter or discharge contracts;

Assignment.

That any assignment of this Annuity must be made in writing and that the Company shall not be deemed to have knowledge of any assignment unless the original or a duplicate thereof is filed at the Home Office of the Company and its receipt duly

acknowledged; That the Company assumes no responsibility for the validity of any assignment;

Evidence that Annuitants Are Living.

That due proof that the Annuitants, or either of them, are living shall, if required by the Company, be furnished before each payment hereunder shall be made.

Assets Segregation.

The Company conducts a participating life department, a non-participating life department (in which this Annuity is issued) and an accident and health department. The assets of the non-participating life department and of the accident and health department, to the extent of the reserves required on their respective contract liabilities, and all assets of the participating life department after providing for operating and fixed charges, are held for the benefit and security of the contractholders of each department, respectively. The assets representing corporate capital and corporate surplus are further security for all contracts and other liabilities of the Company.

Premium.

This Annuity is issued in consideration of the application therefor and of the payment in advance of the single premium of Fifteen Thousand Dollars.

The application for this Annuity, a copy of which is attached hereto and made a part hereof, with this

page, constitutes the entire contract between the parties.

In Witness Whereof Pacific Mutual Life Insurance Company has, by its proper officers, signed this Contract at Los Angeles, California, as of the thirteenth day of November, 1939, its date of issue.

[Officers' signatures.]

Non-Participating.

Single Premium.

Joint and Survivor Annuity.

JOINT EXHIBIT No. 9

(Filed March 26, 1954)

The Prudential Insurance Company of America
(Hereinafter Designated as the Company)

Hereby Grants on the lives of Spencer Grant and Blanche Kelleher Grant, herein designated as the Annuitants, whose respective residences on the date of this Contract are 206 Sansome Street, San Francisco, Calif.; 206 Sansome Street, San Francisco, Calif.

An Annuity of Thirteen Hundred Thirteen and 00/100 Dollars, payable to the Annuitants Spencer Grant or Blanche Kelleher Grant, while both of them are living, and after the death of one of them, to the survivor during the remainder of

his or her lifetime, unless otherwise provided by endorsement on this Contract, in equal annual payments of Thirteen Hundred Thirteen and 00/100 Dollars, at the Home Office of the Company in Newark, New Jersey, on the first day of October in every year during the lifetime of the Annuitants, commencing on the first day of October, 1940, and terminating with the last periodical payment before the death of the Annuitant who is the second to die.

This Annuity is granted upon the condition that said Annitnant, Spencer Grant, was born on the first day of January, 1880, and that said Annuitant, Blanche Kelleher Grant, was born on the twenty-sixth day of January, 1881, and that the ages, calculated to the last completed quarter of a year, of said Annuitants at the date of this Contract are 59 years and $57\frac{3}{4}$ years respectively, but if, in the case of either Annuitant, such date of birth and age shall prove to be incorrect the amount of the Annuity payable under the Contract shall be adjusted in accordance with the correct ages of said Annuitants on the date of the Contract calculated to the last completed quarter of a year, and shall be such as the actual money paid as the purchase price would have purchased at such correct ages according to the Company's published tables of Last Survivor Life Annuity Rates in effect on the date of this Contract. Any overpayments made by the Company prior to such adjustment, with interest thereon at the rate of five per cent per annum, shall

be charged against payments to be made after adjustment, and any under-payments with similar interest shall be paid in full upon such adjustment.

This Contract is made in consideration of the payment on its delivery of the Purchase Price of Twenty-five Thousand and 00/100 Dollars, in one sum, at the Home Office of the Company, or to an agent of the Company in exchange for an official receipt signed by the President or the Secretary and countersigned by an authorized agent of the Company.

This Agreement, together with the provisions printed or written by the Company on the following pages, contains and constitutes the entire Contract between the parties hereto.

In Witness Whereof, the said The Prudential Insurance Company of America, at its office in the City of Newark, New Jersey, has caused this Contract to be signed by its President and its Secretary, and to be duly attested, this third day of January, One Thousand Nine Hundred and Thirty-nine.

[Officers' signatures.]

Ages: 59

57 $\frac{3}{4}$

Last Survivor Life Annuity Contract—Non-Participating.

Annual Annuity Payment, \$1,313.00; First Payment, October 1, 1940.

JOINT EXHIBIT No. 10

(Filed March 26, 1954)

The Prudential Insurance Company of America
(Hereinafter Designated as the Company)

Hereby Grants on the lives of Spencer Grant and Blanche Kelleher Grant, herein designated as the Annuitants, whose respective residences on the date of this Contract are 206 Sansome Street, San Francisco, Calif.; 206 Sansome Street, San Francisco, Calif.

An Annuity of Thirteen Hundred Thirty-eight and 25/100 Dollars, payable to the Annuitants Spencer Grant and Blanche Kelleher Grant, while both of them are living, and after the death of one of them, to the survivor during the remainder of his or her lifetime, unless otherwise provided by endorsement on this Contract, in equal annual payments of Thirteen Hundred Thirty-eight and 25/100 Dollars, at the Home Office of the Company in Newark, New Jersey, on the thirty-first day of December in every year during the lifetime of the Annuitants, commencing on the thirty-first day of December, 1940, and terminating with the last periodical payment before the death of the Annuitant who is the second to die.

This Annuity is granted upon the condition that said Annitnant, Spencer Grant, was born on the first day of January, 1880, and that said Annuitant, Blanche Kelleher Grant, was born on the twenty-

sixth day of January, 1881, and that the ages, calculated to the last completed quarter of a year, of said Annuitants at the date of this Contract are $59\frac{3}{4}$ years and $58\frac{3}{4}$ years, respectively, but if, in the case of either Annuitant, such date of birth and age shall prove to be incorrect the amount of the Annuity payable under the Contract shall be adjusted in accordance with the correct ages of said Annuitants on the date of the Contract calculated to the last completed quarter of a year, and shall be such as the actual money paid as the purchase price would have purchased at such correct ages according to the Company's published tables of Last Survivor Life Annuity Rates in effect on the date of this Contract. Any overpayments made by the Company prior to such adjustment, with interest thereon at the rate of five per cent per annum, shall be charged against payments to be made after adjustment, and any under-payments with similar interest shall be paid in full upon such adjustment.

This Contract is made in consideration of the payment on its delivery of the Purchase Price of Twenty-five Thousand and 00/100 Dollars, in one sum, at the Home Office of the Company, or to an agent of the Company in exchange for an official receipt signed by the President or the Secretary and countersigned by an authorized agent of the Company.

This Agreement, together with the provisions printed or written by the Company on the following

pages, contains and constitutes the entire Contract between the parties hereto.

In Witness Whereof, the said The Prudential Insurance Company of America, at its office in the City of Newark, New Jersey, has caused this Contract to be signed by its President and its Secretary, and to be duly attested, this thirteenth day of November, One Thousand Nine Hundred and Thirty-nine.

[Officers' signatures.]

Ages: $59\frac{3}{4}$

$58\frac{3}{4}$

Last Survivor Life Annuity Contract—Non-Participating.

Annual Annuity Payment, \$1,338.25; First Payment, December 31, 1940.

JOINT EXHIBIT No. 11

(Filed March 26, 1954)

Sun Life Assurance Company of Canada

Head Office: Montreal

(Incorporated in Canada in 1865

as a Limited Company)

No. A-121202.

Ages: 59 Years and

57 Years 11 Months.

Hereby Agrees to Pay

to Spencer Grant and/or Mrs. Blanche Kelleher Grant the sum of One Thousand Three Hundred and Fifteen $79/100$ Dollars on the first day of July, 1939, if the said Spencer Grant or Blanche Kelleher Grant be alive on that date and the sum of Two Thousand Six Hundred and Thirty-one $58/100$ Dollars on the first day of July, 1940, if the said Spencer Grant or Blanche Kelleher Grant, (the Annuitants) be then living and a like amount yearly thereafter on the first day of July in each year during the subsequent joint lifetime of the Annuitants and during the lifetime of the survivor of them.

This policy is issued on the basis of the representations contained in the application therefor and in consideration of the sum of Fifty Thousand Dollars (the purchase price), the payment of which by the said Spencer Grant and Blanche Kelleher Grant is hereby acknowledged.

This policy shall not participate in the surplus of the Company.

All amounts payable or receivable hereunder shall be paid at the Company's office in San Francisco, California, in lawful currency of the United States of America.

The Provisions printed or written by the Company on the following pages form part of the contract and are binding on both parties thereto.

Signed and Sealed at Montreal, this fourth day of January, One Thousand Nine Hundred and Thirty-nine.

[Company seal.]

[Officers' signatures.]

Joint Life and Last Survivor Annuity Policy—
Without Proportionate Payment to Date of
Death—Nonparticipating.

JOINT EXHIBIT No. 12
(Filed March 26, 1954)

Sun Life Assurance Company of Canada
Head Office: Montreal
(Incorporated in Canada in 1865
as a Limited Company)

No. A-122793.

Ages: 59 years 10 months
58 years 9 months

Hereby Agrees to Pay
to Spencer Grant and/or Mrs. Blanche Kelleher
Grant the sum of Three Hundred and Fifty-two
38/100 Dollars on the thirty-first day of December,
1939, if the said Spencer Grant or Blanche Kelleher
Grant be alive on that date and the sum of Two
Thousand Six Hundred and Seventy-nine 53/100
Dollars on the thirty-first day of December, 1940,
if the said Spencer Grant or Blanche Kelleher
Grant, (the Annuitants) be then living and a like
amount yearly thereafter on the thirty-first day of
December in each year during the subsequent joint
lifetime of the Annuitants and during the lifetime
of the survivor of them.

This policy is issued on the basis of the represen-
tations contained in the application therefor and in
consideration of the sum of Fifty Thousand Dollars
(the purchase price), the payment of which by the
said Spencer Grant and Blanche Kelleher Grant is
hereby acknowledged.

This policy shall not participate in the surplus of the Company.

All amounts payable or receivable hereunder shall be paid at the Company's office in San Francisco, California, in lawful currency of the United States of America.

The Provisions printed or written by the Company on the following pages form part of the contract and are binding on both parties thereto.

Signed and Sealed at Montreal, this seventeenth day of November, One Thousand Nine Hundred and Thirty-nine.

[Company seal.]

[Officers' signatures.]

Joint Life and Last Survivor Annuity Policy—
Without Proportionate Payment to Date of
Death—Nonparticipating.

JOINT EXHIBIT No. 13

(Filed March 26, 1954)

The Travelers Insurance Company
Hartford, Connecticut

Number: 2109941

Annuitants	Date of Birth
Spencer Grant	January 1, 1880
Blanche Kelleher Grant	January 26, 1881
Single Premium	First Annuity Payment
\$25,000	December 31, 1940
Amount of Annuity	Payments Thereafter
\$1,346.72	Annually

By this Annuity Contract Agrees to Pay to the above-named Annuitants, jointly, the amount of annuity stated above on the date specified for the First Annuity Payment and a like amount at the intervals specified for Payments Thereafter during the joint lives of the Annuitants upon receipt and approval by the Company of due proof that all of the Annuitants are living on the due date of each such payment.

Survivor.

Upon the death of any of the said Annuitants the Company will make the annuity payments on the same dates during the lives of the Survivors or Survivor upon receipt and approval of similar proof.

Upon the death of the Survivor all liability of the Company hereunder shall thereupon cease and the contract shall be at an end.

Premium.

This contract is issued in consideration of the signed applications for this annuity which are made a part hereof and copies of which are attached hereto and of the single premium hereinabove stated payable on the delivery of this contract in exchange for a receipt signed by the President or a Secretary and countersigned by an authorized agent of the Company.

Age.

Upon the declaration that the Annuitants were born on the respective dates of birth stated above this annuity is granted and accepted, but if the age of any Annuitant was incorrectly stated any amount payable hereunder shall be such as the premium paid would have purchased at the true ages of the Annuitants.

No agent can make, alter or discharge this contract or extend the time for payment of premium, nor can this contract be varied or altered or its conditions waived or extended in any respect, except by the written agreement of the Company, in compliance with the law of the state in which the contract is issued, signed by the President or one of the Vice-Presidents or Secretaries, whose authority will not be delegated.

Incontestability.

This contract shall be incontestable after it shall have been in force for a period of two years from its date of issue. It is free from conditions as to residence, occupation, travel or place of death.

Reserve Basis.

The reserve for which funds are to be held upon this contract shall be computed upon the Combined Annuity Tables with interest at 4% per annum by the net level premium reserve method.

Entire Contract.

This instrument and the applications constitute the entire contract between the parties hereto.

In Witness Whereof The Travelers Insurance Company has caused this instrument to be executed at Hartford, Connecticut, this Seventeenth day of November, 1939.

[Officers' signatures.]

Longer Life Annuity.

Joint and Survivor.

Single Premium.

Non-Participating.

JOINT EXHIBIT No. 14

(Filed March 26, 1954)

The Travelers Insurance Company
Hartford, Connecticut

Number: 2111175

Annuitants	Date of Birth
Spencer Grant	January 1, 1880
Blanche Kelleher Grant	January 26, 1881
Single Premium	First Annuity Payment
\$25,000	December 31, 1940
Amount of Annuity	Payments Thereafter
\$1,346.72	Annually

By this Annuity Contract Agrees to Pay to the above-named Annuitants, jointly, the amount of annuity stated above on the date specified for the First Annuity Payment and a like amount at the intervals specified for Payments Thereafter during the joint lives of the Annuitants upon receipt and approval by the Company of due proof that all of the Annuitants are living on the due date of each such payment.

Survivor.

Upon the death of any of the said Annuitants the Company will make the annuity payments on the same dates during the lives of the Survivors or Survivor upon receipt and approval of similar proof.

Upon the death of the Survivor all liability of the Company hereunder shall thereupon cease and the contract shall be at an end.

Premium.

This contract is issued in consideration of the signed applications for this annuity which are made a part hereof and copies of which are attached hereto and of the single premium hereinabove stated payable on the delivery of this contract in exchange for a receipt signed by the President or a Secretary and countersigned by an authorized agent of the Company.

Age.

Upon the declaration that the Annuitants were born on the respective dates of birth stated above this annuity is granted and accepted, but if the age of any Annuitant was incorrectly stated any amount payable hereunder shall be such as the premium paid would have purchased at the true ages of the Annuitants.

No agent can make, alter or discharge this contract or extend the time for payment of premium, nor can this contract be varied or altered or its conditions waived or extended in any respect, except by the written agreement of the Company, in compliance with the law of the state in which the contract is issued, signed by the President or one of the Vice-Presidents or Secretaries, whose authority will not be delegated.

Incontestability.

This contract shall be incontestable after it shall have been in force for a period of two years from its date of issue. It is free from conditions as to residence, occupation, travel or place of death.

Reserve Basis.

The reserve for which funds are to be held upon this contract shall be computed upon the Combined Annuity Tables with interest at 4% per annum by the net level premium reserve method.

Entire Contract.

This instrument and the applications constitute the entire contract between the parties hereto.

In Witness Whereof The Travelers Insurance Company has caused this instrument to be executed at Hartford, Connecticut, this Twenty-fifth day of November, 1939.

[Officers' signatures.]

Longer Life Annuity.

Joint and Survivor.

Single Premium.

Non-Participating.

JOINT EXHIBIT No. 15

(Filed March 26, 1954)

Form 706

Treasury Department

Internal Revenue Service

United States

Estate Tax Return

(To be executed and filed in duplicate)

Estates of nonresidents not citizens of the United States may generally file on Form 706NA instead of this form. For details see back of sheet XX.

Decedent's name: Blanche Kelleher Grant.

Date of death: March 2, 1947.

Residence (domicile) at time of death: San Francisco, California.

Citizenship (nationality) at time of death: United States of America.

Joint Exhibit No. 15—(Continued)

Schedule E

Jointly Owned Property

(See instructions on reverse of the preceding sheet)

(1) Did the decedent, at the time of his death, own any property as a joint tenant or as a tenant by the entirety, with right of survivorship? (Answer "Yes" or "No.")

Yes.

(2) If so, state the name and address of each surviving cotenant.

Spencer Grant, surviving husband, 206 Sansome Street, San Francisco 4, California.

Item No.	Description	Value at Date of Death
1	Joint Savings Account No. 1194 with Bank of Montreal, San Francisco, California	\$22,774.73
	Less contribution by Spencer Grant ..	3,725.94
		<u>\$ 19,048.79</u>
2	Joint Commercial Account in Bank of Montreal, San Francisco, Cali- fornia	\$ 8,324.64
	Less outstanding checks	275.50
		<u>8,049.14</u>
3	Joint Savings Account No. 6401 with Crocker First National Bank of San Francisco	\$ 7,624.73
	Less contribution by Spencer Grant ..	1,906.18
		<u>5,718.55</u>
4	Home at 55 Laurel Street, San Fran- cisco, net sale price	\$50,000.00
	Less contribution by Spencer Grant ..	12,500.00
		<u>37,500.00</u>

Joint Exhibit No. 15—(Continued)

5	Cottage and land at Brockway, Lake Tahoe, California, (description attached)	\$12,500.00	
	Contents	500.00	
		<hr/>	
		\$13,000.00	
	Less contribution by Spencer Grant ..	3,250.00	9,750.00
		<hr/>	
6	Decedent owned Series G bonds in joint names, all purchased by her, of the face value of		2,500.00
7	Joint and several annuity policies, as shown on schedule annexed, valued according to Table A of Regulations 105, with adjustment for first payments before the end of the first year at		160,399.45
Note: In 1944 and 1945, Spencer Grant purchased with his own funds \$5,000 Series G bonds payable to himself or the decedent.			
		<hr/>	
	Total (also enter under the Recapitulation, Schedule O)		\$242,965.93

Estate of Blanche Kellcher Grant, Deceased.

EXHIBIT A

Estate of Blanche K. Grant
(Schedule E, Item 7)

Valuation of joint and survivor annuities under Table A of Regulations 105, Spencer Grant, surviving annuitant having been born on January 1, 1880, and being 67 years of age on March 2, 1947, the date of decedent's death.

Number of Policy	Company	Annuity Date	Amount of Annuity	Value per Dollar of Annuity	Value of Policy
56921	Connecticut General Life	Mar. 28	\$2,629.00	\$8.14979	\$ 21,425.80
13523	Connecticut Mutual Life	Apr. 1	1,314.25	8.13635	10,693.20
2296	Metropolitan Life	Apr. 1	328.18	8.13635	2,670.19
2297	Metropolitan Life	Apr. 1	984.54	8.13635	8,010.57
972085	Pacific Mutual Life	July 1	1,428.32	7.88366	11,260.39
A121202	Sun Life of Canada	July 1	2,631.58	7.88366	20,746.48
AN18809	Aetna Life	Oct. 1	1,973.40	7.63366	15,064.26
AN18810	Aetna Life	Oct. 1	657.80	7.63366	5,021.42
A21422	Provident Life	Oct. 1	1,313.00	7.63366	10,023.00
A22937	Provident Life	Dec. 31	1,338.25	7.38366	9,881.18
987534	Pacific Mutual Life	Dec. 31	803.23	7.38366	5,930.78
A172793	Sun Life of Canada	Dec. 31		7.38366	19,784.74
2111175	Travelers Insurance Co.	Dec. 31	1,346.72	7.38366	9,943.72
2109941	Travelers Insurance Co.	Dec. 31	1,346.72	7.38366	9,943.72

Total value\$160,399.45

Note: For basis of valuations of annuities, see annexed letter from Coates and Herfurth, independent actuaries, San Francisco, California.

Joint Exhibit No. 15—(Continued)

Grant Estate

Present Value of Annual Payments of \$1.00 for Life. Age 67. Combined Experience Table and 4% Interest.

Date of First Payment	Value as of March 2, 1947
March 28, 1947.....	\$8.14979
April 1, 1947.....	8.13635
July 1, 1947.....	7.88366
October 1, 1947.....	7.63366
December 31, 1947	7.38366
March 2, 1948.....	7.21699

“Present Value” may be defined as the sum of money which, if deposited in a bank, would be just sufficient to provide annual payments for life, provided that interest is credited each year on the balance of the account at the rate shown, and provided that mortality is in accordance with the Table of Mortality used.

I certify that the above figures are the present values as of March 2, 1947, of an annual payment of \$1.00 for the lifetime of a person aged 67, the first payment being made on the date indicated, based on interest at 4% per annum and the Combined Experience Table of Mortality. I also certify that, according to the Combined Experience Table of Mortality, the Expectation of Life for a person aged 67 is 9.96 years.

COATES and HERFURTH,
Consulting Actuaries,

By /s/ G. FRANK WAITES.

San Francisco, California, May 10, 1948.

Coates and Herfurth, Consulting Actuaries

Joint Exhibit No. 15—(Continued)

Form 712

Treasury Department

Internal Revenue Service

Life Insurance Statement

(To be filed by Executor with Federal Estate Tax
Return, Form 706)

Name of Insurance Company: Aetna Life Insurance
Company, Hartford, Conn.

Name of decedent (annuitant): Blanche K. Grant.

Date of death: March 2, 1947.

Number of policy: AN-18810 (other annuitant
Spencer Grant).

Date of issue: Jan. 1, 1939.

Kind of policy: Joint & Survivor Life Annuity of
\$657.80.

Amount of premium: \$11,984.05 Single.

Names(s) of beneficiary(ies): Annually, beginning
10-1-40, payable to said Blanche K. Grant or
said Spencer Grant, provided that no annuity
payments shall be made to either annuitant who
is deceased.

Face amount of policy:

Amount of accumulated dividends:

Amount of post mortem dividends:

Principal of any indebtedness to the company de-
ductible in determining the net proceeds:

Interest on the foregoing amount accrued to the date
of death:

Amount of proceeds (if payable in one sum):

Joint Exhibit No. 15—(Continued)

Value of proceeds as of the date of death (if not payable in one sum): \$8,045.16 (Basis—cost of new contract).

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary):

Amount of installments:

Date of birth of any person the duration of whose life may measure the number of payments:

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits:

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits:

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? AN-18809.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: No record.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

L. O. KINNE,

Assistant Secretary;

By /s/ E. F. BASSFORD.

(Date of certification): March 25, 1947.

Joint Exhibit No. 15—(Continued)

Form 712

Treasury Department

Internal Revenue Service

Life Insurance Statement

(To be filed by Executor with Federal Estate Tax
Return, Form 706)

Name of Insurance Company: Aetna Life Insurance
Company, Hartford, Conn.

Name of decedent (annuitant): Blanche K. Grant.

Date of death: March 2, 1947.

Number of policy: AN-18809 (other annuitant
Spencer Grant).

Date of issue: Jan. 1, 1939.

Kind of policy: Joint & Survivor Life Annuity of
\$1,973.40.

Amount of premium: \$38,015.95 Single.

Name(s) of beneficiary(ies): Annually, beginning
10-1-39, payable to said Blanche K. Grant or said
Spencer Grant, provided that no annuity pay-
ments should be made to either annuitant who is
deceased.

Face amount of policy:

Amount of accumulated dividends:

Amount of post mortem dividends:

Principal of any indebtedness to the company de-
ductible in determining the net proceeds:

Interest on the foregoing amount accrued to the
date of death:

Amount of proceeds (if payable in one sum):

Value of proceeds as of the date of death (if not

Joint Exhibit No. 15—(Continued)

payable in one sum): \$24,137.47 (Basis—cost of new contract).

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary):

Amount of installments:

Date of birth of any person the duration of whose life may measure the number of payments:

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits:

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits:

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? AN-18810.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: No record.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

L. O. KINNE,
Assistant Secretary;

By /s/ E. F. BASSFORD.

(Date of certification): March 25, 1947.

Joint Exhibit No. 15—(Continued)

Form 712

Treasury Department

Internal Revenue Service

Life Insurance Statement

(To be filed by Executor with Federal Estate Tax
Return, Form 706)

Name of Insurance Company: Connecticut General
Life Insurance Company.

Name of decedent (insured): Blanche K. Grant.

Date of death: 3-2-47.

Number of policy: A-56921.

Date of issue: 12-28-38.

Kind of policy: Single Premium Longer Life An-
nuity.

Amount of premium: \$50,000.00.

Name(s) of beneficiary(ies): Spencer Grant.

Face amount of policy: None.

Amount of accumulated dividends:

Amount of post mortem dividends:

Principal of any indebtedness to the company de-
ductible in determining the net proceeds:

Interest on the foregoing amount accrued to the
date of death:

Amount of proceeds (if not payable in one sum):

Value of proceeds as of the date of death (if not
payable in one sum): \$33,583.11.

Provisions of policy with respect to the deferred
payments or to the installments (attach ad-

Joint Exhibit No. 15—(Continued)

ditional sheet if necessary): A life income of \$2,629.00 per annum to Spencer Grant.

Amount of installments:

Date of birth of any person the duration of whose life may measure the number of payments: January 1, 1880.

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits.

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits: Modified Standard Annuity 2%.

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? Yes—as above.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records:

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

/s/ ROBERT K. WOLF,
Secretary.

(Date of certification): April 15, 1947.

Joint Exhibit No. 15—(Continued)

Form 712

Treasury Department

Internal Revenue Service

Life Insurance Statement

(To be filed by Executor with Federal Estate Tax
Return, Form 706)

Name of Insurance Company: Sun Life Assurance
Company of Canada, Montreal, Canada.

Name of decedent payee: Mrs. Blanche Kelleher
Grant.

Date of death: March 2, 1947.

Number of policy: A122793.

Date of issue: Nov. 13, 1939.

Kind of policy: Joint Life and Last Survivorship
Annuity.

Amount of premium: Single \$50,000.00.

Name(s) of beneficiary(ies): Co-Annuitant—Spencer Grant.

Face amount of policy:

Amount of accumulated dividends:

Amount of post mortem dividends:

Principal of any indebtedness to the company deductible in determining the net proceeds:

Interest on the foregoing amount accrued to the date of death:

Amount of proceeds (if payable in one sum):

Value of proceeds as of the date of death (if not payable in one sum): \$32,070.82.

Provisions of policy with respect to the deferred payments or to the installments (at-

Joint Exhibit No. 15—(Continued)

tach additional sheet if necessary): Annual instalments of \$2,679.53 continue payable to the surviving Annuitant—Spencer Grant—during his lifetime only.

Amount of installments: \$2,679.53 Annually.

Date of birth of any person the duration of whose life may measure the number of payments: Spencer Grant—Born January 1, 1880.

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits:

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits: Current manual rates.

Was the payee the annuitant or beneficiary of any other annuity contract issued by the company? A-121202.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records:

The undersigned officer of the above-named insurance company hereby certifies that to the best of his knowledge & belief this statement sets forth correct and true information

/s/ E. L. EARL,

Associate Secretary.

(Date of certification): April 2, 1947.

Joint Exhibit No. 15—(Continued)

Form 712

Treasury Department

Internal Revenue Service

Life Insurance Statement

(To be filed by Executor with Federal Estate Tax
Return, Form 706)

Name of Insurance Company: Sun Life Assurance
Company of Canada, Montreal, Canada.

Name of decedent payee: Mrs. Blanche Kelleher
Grant.

Date of death: March 2, 1947.

Number of policy: A121202.

Date of issue: Jan. 1, 1939.

Kind of policy: Joint Life and Last Survivorship
Annuity.

Amount of premium: Single \$50,000.00.

Name(s) of beneficiary(ies): Co-Annuitant—Spencer Grant.

Face amount of policy:

Amount of accumulated dividends:

Amount of post mortem dividends:

Principal of any indebtedness to the company deductible in determining the net proceeds:

Interest on the foregoing amount accrued to the date of death:

Amount of proceeds (if payable in one sum):

Value of proceeds as of the date of death (if not payable in one sum): \$32,894.75.

Provisions of policy with respect to the deferred payments or to the installments (attach ad-

Joint Exhibit No. 15—(Continued)

ditional sheet if necessary): Annual installments of \$2,631.58 continue payable to the surviving annuitant—Spencer Grant—during his lifetime only.

Amount of installments: \$2,631.58.

Date of birth of any person the duration of whose life may measure the number of payments: Spencer Grant—Born Jan. 1, 1880.

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits:

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits: Current manual rates.

Was the payee the annuitant or beneficiary of any other annuity contract issued by the company? A-122793.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records:

The undersigned officer of the above-named insurance company hereby certifies that to the best of his knowledge & belief this statement sets forth correct and true information.

/s/ E. L. EARL,

Associate Secretary.

(Date of certification): April 2, 1947.

Joint Exhibit No. 15—(Continued)

Pacific Mutual Life Insurance Company
Home Office Los Angeles, California
A. N. Kemp, Chairman of the Board
Asa V. Call, President

Los Angeles 55, California

March 20, 1947.

#972085, 987534

Mr. J. Wm. Klein, Accountant for Spencer Grant,
c/o Grant—Birkholm & Co., Inc.,
206 Sansome Street,
San Francisco 4, California.

Dear Mr. Klein:

Responding to your letter of March 12 to our Agency Office in Oakland, we are furnishing the following information:

We should be furnished with a certified copy of the Death Certificate, which will furnish proof of Mrs. Grant's death.

On March 2, 1947, this Company would have sold a Life Annuity to a man born January 1, 1880, which would pay him \$1,428.32 on July 1, 1947, and a like payment on July 1 of each year thereafter, provided such purchaser were alive on each of the payment due dates. The premium for this would have been \$17,746.00. Your letter gave Mr. Grant's

Joint Exhibit No. 15—(Continued)

birth date as January 1, 1881, but our records show the year to have been 1880.

A broker handling the business would have been paid a commission of $2\frac{1}{2}\%$, or \$443.65.

While you did not ask for the same information with reference to the other contract (#987534) you are informed as follows, with regard to it:

On March 2, 1947, this Company would have sold a Life Annuity to a man born January 1, 1880, which would pay him \$803.23 on December 31, 1947, and annually thereafter provided, as above, that such purchaser were alive on each of the payment due dates, for a premium of \$9,562.00. A broker's commission would have been \$239.05.

We are sending this letter in triplicate, and through Mr. Dreyer's office, for delivery to you.

Very truly yours,

/s/ LESLIE J. COOPER.

LJC:law

Joint Exhibit No. 15—(Continued)

Metropolitan Life Insurance Company
Frederick H. Ecker, Chairman of the Board
Leroy A. Lincoln, President

Pacific Coast Head Office:
600 Stockton Street,
San Francisco 20, California.

March 28, 1947.

Bene & Ann TW

Grant-Birkholm & Conmany, Inc.,
Insurance Brokers,
206 Sansome Street,
San Francisco 4, California.

Attention J. William Klein, Accountant:
Subject: Annuity Contract 2296-AB-2.

Gentlemen:

This is in reply to your letters of March 12 and 18, in reference to Annuity Contract 2296-AB-2. You have asked.

“1. The cost as of March 2, 1947, of an annuity policy in favor of Mr. Grant, who was born on January 1, 1880, providing for the payment to him of the sum of \$328.18 per year on April 1, without any provision for the refund of the unpaid portion of the cost of the annuity.”

The cost would be \$4,393.81.

Joint Exhibit No. 15—(Continued)

“2. The amount of the commision customarily paid by you to the broker for the placing of the policy at the cost set forth in answer to question 1 above.”

The Commission would be either $2\frac{1}{4}\%$ or $2\frac{1}{2}\%$ depending upon the contract with the Agent writing the Annuity.

Yours truly,

/s/ R. W. HODGSON,

Supervisor Issue Division.

Metropolitan Life Insurance Company
Frederick H. Ecker, Chairman of the Board
Leroy A. Lincoln, President

Pacific Coast Head Office:

600 Stockton Street,

San Francisco 20, California.

March 28, 1947.

Bene & Ann TW

Grant-Birkholm & Company, Inc.,
Insurance Brokers,
206 Sansome Street,
San Francisco 4, California.

Attention J. William Klein, Accountant:

Subject: Annuity Contract 2297-AB-2.

Gentlemen:

This is in reply to your letters of March 12 and

Joint Exhibit No. 15—(Continued)

March 18, in reference to Annuity Contract 2297-AB-2.

You have asked:

“1. The cost as of March 2, 1947, of an annuity policy in favor of Mr. Grant, who was born on January 1, 1880, providing for the payment to him of the sum of \$984.54 per year on April 1 without any provision for the refund of the unpaid portion of the cost of the annuity.”

The Cost would be \$13,181.42.

“2. The amount of the commission customarily paid by you to the broker for the placing of the policy at the cost set forth in answer to question 1 above.”

The commission would be either $21\frac{1}{4}\%$ or $21\frac{1}{2}\%$ depending upon the contract with the Agent writing the Annuity.

Yours truly,

/s/ R. W. HODGSON,
Supervisor Issue Division.

Joint Exhibit No. 15—(Continued)

The Connecticut Mutual Life Insurance Company
Hartford

1404 Franklin Street,
Oakland 12, Calif.

March 21, 1947.

Mr. J. William Klein,
Accountant for Spencer Grant,
Grant-Birkholm & Co., Inc.,
206 Sansome Street,
San Francisco 4, California.

Dear Mr. Klein:

Further to our letter of March 14, we have now received information from our Home Office, that the sum of \$16,780.74 would be the single premium required for an annuity without refund if purchased as of March 2, 1947, by a man born January 1, 1880, with a first payment of \$1,314.25 on April 1, 1947, and annually thereafter.

If we can be of further service in this matter, please let us know.

Yours very truly,

/s/ JAMES L. TAYLOR,
General Agent.

JLT:CH

P. S. We are enclosing a form to be completed by Mr. Grant, and we will also require consent to pay from the State Controller Inheritance Tax Department before continuing the annuity payments.

Joint Exhibit No. 15—(Continued)

The Prudential Insurance Company of America
Home Office, Newark, N. J.

Herrick C. Brown, C.L.U., Manager
Oakland Ordinary Agency

16th Street and Telegraph Avenue,
Oakland, Calif.

July 19, 1947.

Mr. Edgar T. Zook,
Attorney for Spencer Grant, Executor,
1101 Alaska Commercial Building,
San Francisco 4, California.

In re: Policy A21422 & A22937
Spencer & Blanche K. Grant.

Dear Mr. Zook:

Our Home Office has adjusted their records so that future checks will be drawn to the order of Spencer Grant.

It is a regulation of the United States Treasury Department that forms 712 are to be completed only in connection with actual life insurance policies, therefore they will not be furnished, but the following information is what you desire:

Annuities A-21422 and A-22937 are Last Survivor Annuity contracts, which were issued on January 3, 1939, and Nov. 13, 1939, respectively, to Spencer Grant and Blanche Kelleher Grant for a purchase price of \$25,000 each. Annuity contracts A-21422 provided for a pro rata payment of \$984.75 on Oct. 1, 1939, with subsequent payments to be made annually in the amount of \$1,313.00 on October

Joint Exhibit No. 15—(Continued)

1 of each year during the lifetime of the annuitants. Annuity contract A-22937 provided for a pro rata payment of \$175.51 on Dec. 31, 1939, with subsequent payments to be made annually in the amount of \$1,338.25 on Dec. 31 of each year during the lifetime of the annuitant. Such checks representing the payments under both contracts were drawn to the order of Spencer Grant or Blanche Kelleher Grant. Both contracts further provide that at the death of one of the annuitants payments will continue to the survivor as long as he or she shall live.

Since Mrs. Grant died on March 2, 1947, the value of the income payable to Mr. Grant would be considered equivalent to the cost to buy Life Annuities providing him similar incomes. Thus, on the basis of the 1937 Standard Annuitant's Table of Mortality with two per cent interest, an amount of \$16,110.85, as of 3-2-47, would provide a lifetime income of \$1,338.25 annually to a man aged 67, starting with a payment due Dec. 31, 1947. This would be comparable to the income being received under contract A-22937. Similarly, an amount of \$16,156.97 would provide a lifetime income of \$1313 annually (the same as being received under contract A-21422), to a man aged 67, with the first payment due Oct. 1, 1947.

We trust the above is the information you desire.

Very truly yours,

/s/ V. L. HEFFERNAN,
Office Supervisor.

VH

Joint Exhibit No. 15—(Continued)

The Travelers Insurance Company
Hartford 15, Connecticut
Branch Office

• Branch Office,
508 Sixteenth Street,
Oakland 12, Calif.

May 6, 1947.

Slack, Zook and Edwards,
1101 Alaska Commercial Building,
San Francisco 4, California.

Att: Mr. Edgar T. Zook, Attorney for Spencer
Grant, Executor.

Re: Spencer Grant and Blanche Kelleher
Grant, Annuity Contract 2109941-2111175.

Gentlemen:

Your letter of April 7, 1947, was furnished our Home Office for their attention. They now advise it is not the Company's practice to complete Treasury Department Estate Tax Form 712 with regard to annuity contracts for not only does the form not appear applicable, but we are uncertain of the correct valuation to be used in the event it is determined a tax liability exists.

We assume you are familiar with the captioned contract, both of which were issued under date of November 13, 1939, on our joint and survivor annuity form in consideration of single premiums of \$25,000 on the lives of Spencer Grant and Blanche Kelleher Grant. Each contract was to provide an

Joint Exhibit No. 15—(Continued)

annual income of \$1,346.72 during the joint lifetime of these annuitants and for a continuation of the same payments to the survivor. As a result of the death of Mrs. Grant on March 2, 1947, payments are to continue to Spencer Grant for the remainder of his lifetime.

May we suggest that you discuss this matter with the proper tax authorities and the following valuations may be of use in such a discussion:

1—On the basis of Table A of the Federal Estate Tax Regulations, the value as of March 2, 1947, to a male age 67, of a Life Annuity of \$1,346.72 annually, first payment due December 31, 1947, is \$9,944.33 for each contract.

2—On the basis of this Company's annuity rates then in effect, the cost as of March 2, 1947, of a Life Annuity of \$1,346.72 annually, first payment due December 31, 1947, to a male age 67 2/12 years is \$16,226.90 for each contract.

It may be held that there is nothing taxable at the first death or it may be that there is a tax liability based on the full amount or on one-half the amount of the annuity income. This is something for the proper tax authorities to determine.

Very truly yours,

/s/ M. A. BROGNARD,
Assistant Cashier.

MAB:EM

PLAINTIFF'S EXHIBIT No. 17
(Filed March 26, 1954)

Aetna Life Insurance Company
Hartford 15, Connecticut

December 8, 1953.

Mr. Henry V. Colby,
McKeon and Colby,
310 Sansome Street,
San Francisco 4, California.

Dear Mr. Colby:

Re: Annuity Contracts AN 18809 and 18810
Blanche K. Grant and Spencer Grant.

Contract AN 18809 provides for an annuity of \$1,-973.40 payable on October 1st of each year and Contract AN 18810 provides for an annuity of \$657.80 also payable on October 1st of each year. Both contracts are single premium non-participating and non-refundable joint and survivorship annuity contracts.

On March 2, 1947, we would have charged a female purchaser or nominator born January 26, 1881, the gross premiums hereinafter specified for her purchase from us of single premium non-participating and non-refundable survivorship annuity contracts (as distinguished from joint and survivorship annuity contracts) providing for annuities of the same amounts and payable annually on the same dates as under the Grant contracts with payments to be made to a male annuitant born January 1, 1880, such payments to commence if and when he should survive the female and to continue thereafter for the rest of his life.

Plaintiff's Exhibit No. 17—(Continued)

Premium of \$7,437.74 for annuity of \$1,973.40.

Premium of \$2,479.25 for annuity of \$657.80.

The above quoted premiums are based on our 1947 annuity rates as follows:

(1) Table of mortality used—1937 Standard Annuity Male Table, with the age of the purchaser adjusted by adding three years and the age of the annuitant adjusted by subtracting one year.

(2) Rate of interest—3%.

(3) Loading charge—10.885% of net premium.

It is assumed that the female and the male would have satisfied the necessary conditions of insurability. On March 2, 1947, the date of Mrs. Grant's death, she would not have satisfied those conditions on account of the critical state of her health and we would not have issued such a contract to her on that date.

We have previously furnished you with the amount of the gross premiums we would have charged on March 2, 1947, for single life annuity contracts issued to a male purchaser born January 1, 1880, and providing for the same annuities payable annually to him on the same dates as under the Grant contracts.

Yours very truly,

/s/ RALPH KEFFER,

Actuary.

Ralph Keffer

MEB

[Stamped]: Received Dec. 10, 1953.

Plaintiff's Exhibit No. 17—(Continued)

Connecticut General
Life Insurance Company
Hartford 15, Connecticut

December 9, 1953.

Air Mail

Mr. Henry V. Colby,
McKeon & Colby,
310 Sansome Street,
San Francisco 4, California.

Annuity 56921—Blanche K. and Spencer
Grant.

Dear Mr. Colby:

Contract 56921 provides for an annuity of \$2,629 payable on March 28 of each year. It is a single premium nonparticipating and nonrefundable joint and survivorship annuity contract.

On March 2, 1947, we would have charged a female purchaser or nominator born January 26, 1881, a gross premium of \$7,284.43 for her purchase from us of a single premium nonparticipating and nonrefundable survivorship annuity contract (as distinguished from a joint and survivorship annuity contract), providing for an annuity of the same amount and payable annually on the same date as under the Grant contract with payments to be made to a male annuitant born January 1, 1880; such payments to commence if and when he should survive the female and to continue thereafter for the rest

Plaintiff's Exhibit No. 17—(Continued)

of his life. The above quoted premium is based on our 1947 annuity rates, as follows:

- (1) Table of Mortality used—1937 Standard Annuity Table with one year set-back in age.
- (2) Rate of interest—2%.
- (3) Loading charge— $6\frac{1}{2}\%$ of gross premium.

It is assumed that the female and the male would have satisfied the necessary conditions of insurability. On March 2, 1947, the date of Mrs. Grant's death, she would not have satisfied those conditions on account of the critical state of her health and we would not have issued such a contract to her on that date.

We have previously furnished you with the amount of the gross premiums we would have charged on March 2, 1947, for a single life annuity contract issued to a male purchaser born January 1, 1880, and providing for the same annuities payable annually to him on the same dates as under the Grant contract.

Yours very truly,

/s/ WARD VAN B. HART,
Associate Actuary.

WVBH:ABS

[Stamped]: Received Dec. 10, 1953.

Plaintiff's Exhibit No. 17—(Continued)

Metropolitan Life Insurance Company
One Madison Avenue, New York 10, N. Y.

December 9, 1953.

Mr. Henry V. Colby,
McKeon & Colby,
310 Sansome Street,
San Francisco 4, Calif.

Re: Annuity Contracts 2296-AB2 and 2297-AB2
Blanche K. Grant and Spencer Grant.

Dear Mr. Colby:

Contract 2296-AB2 provides for an annuity of \$328.18 payable on April 1st of each year and Contract 2297-AB2 provides for an annuity of \$984.54 also payable on April 1st of each year. Both contracts are single premium non-participating and non-refundable joint and survivorship annuity contracts.

On the same basis of mortality, interest and loading as used for such joint and survivorship annuity contracts in 1947, the gross premiums would have been as hereinafter specified to a female purchaser or nominator born January 26, 1881, for her purchase from us on March 2, 1947, of single premium non-participating and non-refundable survivorship annuity contracts (as distinguished from joint and survivorship annuity contracts) providing for annuities of the same amounts and payable annually on the same dates as under the Grant contracts with payments to be made to a male annuitant born Janu-

Plaintiff's Exhibit No. 17—(Continued)

ary 1, 1880, such payments to commence if and when he should survive the female and to continue thereafter for the rest of his life:

Premium of \$894.44 for annuity of \$328.18.

Premium of \$2,683.31 for annuity of \$984.54.

The above-quoted premiums are based on our 1947 annuity rates as follows:

(1) Table of mortality used—1937 Standard Annuity Table with three-year setback in age.

(2) Rate of interest $2\frac{1}{4}\%$.

(3) Loading charge—6% of gross premium.

It is assumed that the female and the male would have satisfied the necessary conditions of insurability. On March 2, 1947, the date of Mrs. Grant's death, she would not have satisfied those conditions on account of the critical state of her health and we would not have sold such a contract to her on that date.

We have previously furnished you with the amount of the gross premiums we would have charged on March 2, 1947, for single life annuity contracts issued to a male purchaser born January 1, 1880, and providing for the same annuities payable annually to him on the same dates as under the Grant contracts.

Yours very truly,

/s/ T. A. CROWTHER,

Assistant Actuary.

[Stamped]: Received Dec. 11, 1953.

Plaintiff's Exhibit No. 17—(Continued)

The Head Office of the
Sun Life Assurance Company of Canada
Montreal

December 9, 1953.

Mr. Henry V. Colby,
McKeon & Colby,
310 Sansome Street,
San Francisco 4, California.

Dear Mr. Colby:

Re: Policies Nos. A121,202—A122,793—
Spencer Grant.

Contract A.121,202 provides for an annuity of \$2,631.58 payable on July 1st of each year, and Contract A.122,793 provides for an annuity of \$2,679.53 payable on December 31st of each year. Both contracts are single premium non-participating and non-refundable joint and survivorship annuity contracts.

On March 2, 1947, we would have charged a female purchaser or nominator born January 26, 1881, the gross premiums hereinafter specified for her purchase from us of single premium non-participating and non-refundable survivorship annuity contracts (as distinguished from joint and survivorship annuity contracts) providing for annuities of the same amounts and payable annually on the same dates as under the Grant contracts with payments to be made to a male annuitant born January 1, 1880, such payments to commence if and when he should survive the female and to continue thereafter for the rest of his life:

Plaintiff's Exhibit No. 17—(Continued)

Premium of \$7,947.37 for annuity of \$2,631.58.

Premium of \$8,092.18 for annuity of \$2,679.53.

The above-quoted premiums are based on our 1947 annuity rates as follows:

(1) Table of mortality used:

Assured life—British Offices Life Table Om (5).

Annuitant life—British Offices Annuity Table O(am).

(2) Rate of interest— $3\frac{1}{2}\%$.

(3) Loading charge—10% of net premium.

It is assumed that the female and the male would have satisfied the necessary conditions of insurability. On March 2, 1947, the date of Mrs. Grant's death, she would not have satisfied those conditions on account of the critical state of her health and we would not have sold such a contract to her on that date.

We have previously furnished you with the amount of the gross premiums we would have charged on March 2, 1947, for single life annuity contracts issued to a male purchaser born January 1, 1880, and providing for the same annuities payable annually to him on the same dates as under the Grant contracts.

Yours very truly,

/s/ S. M. BAILEY,

Mathematician.

MB/AV

[Stamped]: Received Dec. 15, 1953.

Plaintiff's Exhibit No. 17—(Continued)

Pacific Mutual Life Insurance Company
Home Office Los Angeles, California
A. N. Kemp, Chairman of the Board
Asa V. Call, President

December 16, 1953.

Mr. Henry V. Colby,
McKeon & Colby,
310 Sansome Street,
San Francisco 4, California.

Annuity Contracts 972085 and 987534 Blanche
K. Grant and Spencer Grant.

Dear Mr. Colby:

Contract 972085 provides for an annuity of \$1,428.32 payable on July 1st of each year and Contract 987534 provides for an annuity of \$803.23 payable on December 31st of each year. Both contracts are single premium non-participating and non-refundable joint and survivorship annuity contracts.

On March 2, 1947, we would have charged a female purchaser or nominator born January 26, 1881, the gross premiums hereinafter specified for her purchase from us of single premium non-participating and non-refundable survivorship annuity contracts (as distinguished from joint and survivorship annuity contracts) providing for annuities of the same amounts and payable annually on the same dates as under the Grant contracts with payments to be made **to a male annuitant** born January 1, 1880, such payments to commence if and when he should survive

Plaintiff's Exhibit No. 17—(Continued)

the female and to continue thereafter for the rest of his life:

Premium of \$3,910.60 for annuity of \$1,428.32.

Premium of \$2,199.16 for annuity of \$803.23.

The above-quoted premiums are based on our 1947 annuity rates as follows:

(1) Table of mortality used—1937 Standard Annuity Table with one year setback in age.

(2) Rate of Interest—2%.

(3) Loading charge—6½% of gross premium.

It is assumed that the female and the male would have satisfied the necessary conditions of insurability. On March 2, 1947, the date of Mrs. Grant's death, she would not have satisfied those conditions on account of the critical state of her health and we would not have issued such a contract to her on that date.

We have previously furnished you with the amount of the gross premiums we would have charged on March 2, 1947, for single life annuity contracts issued to a male purchaser born January 1, 1880, and providing for the same annuities payable annually to him on the same dates as under the Grant contracts.

Yours very truly,

/s/ LESLIE J. COOPER,
Associate Actuary.

[Stamped]: Received Dec. 18, 1953.

Plaintiff's Exhibit No. 17—(Continued)

The Connecticut Mutual Life Insurance Company
Hartford

Airmail.

December 18, 1953.

Mr. Henry V. Colby,
McKeon & Colby,
310 Sansome Street,
San Francisco 4, California.

Single Premium Annuity No. 13523 Blanche
K. Grant, Deceased.

Dear Mr. Colby:

Contract 13523 provides for an annuity of \$1,314.25 payable on April 1 of each year. It is a single premium non-participating and non-refundable joint and survivorship annuity contract.

On March 2, 1947, we would have charged a female purchaser or nominator born January 26, 1881, a gross premium of \$3,600 for her purchase from us of a single premium non-participating and non-refundable survivorship annuity contract (as distinguished from a joint and survivorship annuity contract) providing for an annuity of the same amount and payable annually on the same date as under the Grant contract with payments to be made to a male annuitant born January 1, 1880, such payments to commence if and when he should survive the female and to continue thereafter for the rest of his life. The above-quoted premium is based on our 1947 annuity rates as follows:

Plaintiff's Exhibit No. 17—(Continued)

(1) Table of mortality used—1938 Standard Annuity Table with one year setback in age.

(2) Rate of interest—2%.

(3) Loading charge—6½% of gross premium.

It is assumed that the female and the male would have satisfied the necessary conditions of insurability. On March 2, 1947, the date of Mrs. Grant's death, she would not have satisfied those conditions on account of the critical state of her health and we would not have issued such a contract to her on that date.

We have previously furnished you with the amount of the gross premium we would have charged on March 2, 1947, for a single life annuity contract issued to a male purchaser born January 1, 1880, and providing for the same annuities payable annually to him on the same dates as under the Grant contract.

Sincerely,

/s/ R. H. HARTLEY, JR.,

Assistant Manager Annuity
Department.

RHH:alb

[Stamped]: Received Dec. 21, 1953.

Plaintiff's Exhibit No. 17—(Continued)

The Prudential Insurance Company of America
Western Home Office, Los Angeles 54, Calif.

December 31, 1953.

Mr. Henry V. Colby,
McKeon & Colby,
310 Sansome Street,
San Francisco 4, California.

Annuity Contracts A-21422 and A-22937 Grant
Insurance.

Dear Mr. Colby:

Contract A-21422 provides for an annuity of \$1,313.00 payable on October 1st of each year and Contract A-22937 provides for an annuity of \$1,-338.25 payable on December 31st of each year. Both contracts are single premium non-participating and non-refundable joint and survivorship annuity contracts.

You have asked that we furnish you with the amount we would have charged on March 2, 1947, for an annual reversionary annuity to commence on the October 1st following the death of a female born January 26, 1881, and to continue thereafter during the life of a male born January 1, 1880. The amount of annual annuity was to be \$1,313.00. We did not offer this type of annuity for sale on March 2, 1947, but using the same rate basis as we were using for other annuities offered for sale on that date, the approximate cost of such an annuity would have been \$3,624.

You have also asked that we furnish you with the

Plaintiff's Exhibit No. 17—(Continued)

amount we would have charged on March 2, 1947, for an annual reversionary annuity to commence on the December 31st following the death of a female born January 26, 1881, and to continue thereafter during the life of a male born January 1, 1880. The amount of annual annuity was to be \$1,338.25. For the reasons given above we can only give an approximate cost and this would have been \$3,694.

Our annuity rates in effect on March 2, 1947, were based on the 1937 Standard Annuity table with one-year setback in age for males and six years for females, 2% interest and a loading of 61½% of the gross premium.

It is assumed that the female and the male would have satisfied the necessary conditions of insurability. In particular, since the annuity payment would not commence until she died, the female would have to pass a satisfactory medical examination in order to have such a contract issued.

We have previously furnished you with the amount of the gross premiums we would have charged on March 2, 1947, for single life annuity contracts issued to a male purchaser born January 1, 1880, and providing for the same annuities payable annually to him on the same dates as under the Grant contracts.

Very truly yours,

/s/ HAROLD G. PAFF,
Actuarial Director.

[Stamped]: Received Jan. 2, 1954.

Plaintiff's Exhibit No. 17—(Continued)

The Prudential Insurance Company of America
Western Home Office, Los Angeles 54, Calif.

January 8, 1954.

Mr. Henry V. Colby,
McKeon and Colby,
310 Sansome Street,
San Francisco 4, California.

Dear Mr. Colby:

In my letter of December 31, 1953, costs of reversionary annuities were quoted. This will advise that such annuities are sometimes called "survivorship" annuities although standard textbooks on this subject use the term "reversionary" to describe such annuities.

Very truly yours,

/s/ HAROLD G. PAFF,
Actuarial Director.

[Stamped]: Received Jan. 11, 1954.

Plaintiff's Exhibit No. 17—(Continued)

The Travelers

The Travelers Insurance Company
Hartford 15, Connecticut

Airmail.

January 18, 1954.

Mr. Henry V. Colby,
McKeon and Colby,
310 Sansome Street,
San Francisco 4, California.

Dear Mr. Colby:

Blanche K. Grant and Spencer Grant, Joint
and Survivor Annuity Contracts 2109941
and 2111175 (Grant vs. Smyth).

Both of these contracts provide for an annuity of \$1,346.72 payable on December 31 of each year and are Single Premium, Non-Participating, and Non-Refundable Joint and Survivor Annuity contracts.

You have asked us to furnish you with the amount we would have charged on March 2, 1947, for an annual reversionary annuity of \$1,346.72 to commence on December 31 following the death of a female born January 26, 1881, and to continue thereafter during the life of a male born January 1, 1880. We did not offer this type of annuity for sale on March 2, 1947. However, using the same rate basis as we were using for other annuities offered for sale on that date, the cost of such an annuity would have been \$3,710.42. Reversionary annuities are some-

Plaintiff's Exhibit No. 17—(Continued)

times called "survivorship" annuities, although standard textbooks on this subject use, and we prefer the term "reversionary" to describe them.

Our annuity rates in effect on March 2, 1947, were based on the 1947 standard annuity table, with one-year setback in age, 2% interest, and a loading of $6\frac{1}{2}\%$ of the gross premium.

It is assumed that the female and the male would have satisfied the necessary conditions of insurability. On March 2, 1947, the date of Mrs. Grant's death, she would not have satisfied those conditions on account of the critical state of her health and we would not have issued such a contract to her on that date.

We have previously furnished you with the amount of the gross premium we would have charged on March 2, 1947, for a single Life Annuity contract issued to a male purchaser born January 1, 1880, and providing for the same annuity payable to him annually on the same date as under the Grant contracts.

Yours very truly,

/s/ J. E. JOHNSON,

Matured Contract Supervisor.

[Stamped]: Received Jan. 20, 1954.

[Endorsed]: No. 14,549. United States Court of Appeals for the Ninth Circuit. Spencer Grant, Executor of the Last Will and Testament of Blanche Kelleher Grant, Deceased, Appellant and Appellee, vs. James G. Smyth, Former Collector of Internal Revenue, Appellee and Appellant. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: October 14, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits listed below are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal herein as designated by the attorneys for the appellants:

Complaint.

Answer.

Stipulation of facts.

Stipulation waiving jury.

Opinion.

Judgment.

Notice of appeal by plaintiff.

Cost bond on appeal.

Notice of appeal by defendant.

Stipulation designating contents of record on appeal.

Joint exhibits 1 thru 16, inclusive.

Plaintiff's exhibit 17.

Reporter's transcript of trial, Mar. 26, 1954.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 14th day of October, 1954.

[Seal]

C. W. CALBREATH,
Clerk.

By /s/ WM. C. ROBB,
Deputy Clerk.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,549

JAMES G. SMYTH, Former Collector of Internal
Revenue,

Appellant-Defendant,

vs.

SPENCER GRANT, Executor of the Last Will
and Testament of BLANCHE KELLEHER
GRANT, Deceased,

Appellee-Plaintiff.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD TO BE
PRINTED

Pursuant to Rule 17 of the Rules of the United States Court of Appeals for the Ninth Circuit, appellant-defendant James G. Smyth states the following point to be relied upon on appeal:

That the trial court erred in determining that the value of the annuity contracts in question, on the date of the decedent's death, which is includible in the value of her gross estate for estate tax purposes under Section 811(c)(1)(B) Internal Revenue Code (1939), was \$160,399, as reported in the estate tax return, and not \$257,117.20, as determined by the Commissioner of Internal Revenue.

Appellant-defendant James G. Smyth designates the following portion of the record to be printed:

1. Volume I of certified transcript of record.
2. Volume II of certified transcript of record (reporter's transcript), print only that portion commencing with line 11, page 23, and ending with line 16, page 31.

3. Joint exhibit 15, print only the following:

Sheet I—Print only the lines appearing above the heading "General Instructions."

Schedule E—Sheet VIII.

Sheet A-54.

Sheet A-56.

Sheet A-58.

Sheet A-60.

Sheet A-62.

Sheet A-64.

Sheet A-65.

Sheet A-66.

Sheet A-67.

Sheet A-68.

Sheet A-69.

Sheet A-70.

4. This statement and designation.

LLOYD H. BURKE,

United States Attorney;

By /s/ GEORGE A. BLACKSTONE,
Assistant United States Attorney, Attorneys for
Appellant-Defendant.

[Copy served.]

[Endorsed]: Filed Oct. 18, 1954.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD TO BE
PRINTED

Pursuant to Rule 17 of the Rules of the United States Court of Appeals for the Ninth Circuit, plaintiff-appellant Spencer Grant states the following points on which he intends to rely:

1. The joint and survivorship annuity contracts the subject of the action were excludable from the gross estate of Blanche Kelleher Grant, Deceased, under the Technical Changes Act of 1949 (63 Stat. 891) as a matter of law and the Court below erred in concluding that they were includable.

2. If the annuity contracts were includable in Mrs. Grant's gross estate they had a value of only \$60,980.72, this being the amount which it would have cost to purchase comparable survivorship contracts on the date of her death, and the Court below erred in determining that the annuity contracts had a value of \$160,399.45.

If either or both of the foregoing points are sustained, plaintiff-appellant Spencer Grant is entitled to judgment for the principal sum of \$29,397.68 instead of the sum of \$28,603.43 for which he recovered judgment below.

Plaintiff-appellant Spencer Grant designates the following portion of the record to be printed in ad-

dition to the portion designated by appellant-defendant James G. Smyth:

(1) The following portions of Joint Exhibits 1 through 14:

(a) The first page of each of Joint Exhibits 1, 2 and 3;

(b) Joint Exhibit 4; and

(c) The first page of each of Joint Exhibits 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

(2) The tabulation and letter annexed to "Schedule E-Sheet VIII" of Joint Exhibit 15.

(3) The following portions of Plaintiff's Exhibit 17:

(a) Aetna Life Insurance Co. letter dated December 8, 1953, excluding the last three paragraphs thereof;

(b) Connecticut General Life Insurance Co. letter dated December 9, 1953, excluding the last two paragraphs thereof;

(c) Metropolitan Life Insurance Co. letter dated December 9, 1953, excluding the last three paragraphs thereof;

(d) Sun Life Assurance Co. of Canada letter dated December 9, 1953, excluding the last three paragraphs thereof;

(e) Pacific Mutual Life Insurance Co. letter dated December 16, 1953, excluding the last three paragraphs thereof;

(f) Connecticut Mutual Life Insurance Co. letter dated December 18, 1953, excluding the last two paragraphs thereof;

(g) Prudential Insurance Co. of America letter dated December 31, 1953, excluding the last three paragraphs thereof;

(h) Prudential Insurance Co. of America letter dated January 8, 1954;

(i) The Travelers Insurance Co. letter dated January 18, 1954, excluding the last three paragraphs thereof;

(4) This statement and designation.

/s/ EDGAR T. ZOOK,

/s/ HENRY V. COLBY,

McKEON & COLBY,

Attorneys for Plaintiff-
Appellant.

Service and receipt of copy acknowledged.

[Endorsed]: Filed Oct. 22, 1954.

[Title of Court of Appeals and Cause.]

ADDITIONAL DESIGNATION OF RECORD
TO BE PRINTED

Defendant-Appellee, James G. Smyth, hereby designates to be printed as part of the record Plaintiff's Exhibit 17 in its entirety so that each letter in said Exhibit 17 designated by Plaintiff-Appellant to be printed will be printed in full.

Dated: October 22, 1954.

LLOYD H. BURKE,

United States Attorney;

By /s/ GEORGE A. BLACKSTONE,
Assistant United States Attorney, Attorneys for
James G. Smyth.

Copy mailed.

[Endorsed]: Filed Oct. 22, 1954.

[Title of Court of Appeals and Cause.]

STIPULATION IN REGARD TO EXHIBITS
NOT INCLUDED IN THE PRINTED
RECORD

It Is Hereby Stipulated by and between counsel for the respective parties in the above appeals that either party in either appeal may print as an appendix to its brief such portions of those exhibits which are not included in the printed record upon which such party intends to rely or, in lieu of such printing, may furnish the Court with four type-written copies of such portions of such exhibits.

Dated: October 19, 1954.

LLOYD H. BURKE,

United States Attorney;

By /s/ GEORGE A. BLACKSTONE,

Assistant United States Attorney, Attorneys for
James G. Smyth.

/s/ HENRY V. COLBY,

Attorney for Spencer Grant.

[Endorsed]: Filed Oct. 22, 1954.